

(2004) 12 DEL CK 0062
In the Delhi High Court
Case No : WP (C) 15229 of 2004

V.K. Malhotra

APPELLANT

Vs

The Chairman and Managing Director Rural Electrification
Corpn. Ltd. and Others

RESPONDENT

Date of Decision : 02-12-2004

Acts Referred:

Citation : (2004) 115 DLT 654 : (2005) 80 DRJ 375 : (2006) 1 SLJ 404

Hon'ble Judges : Manmohan Sarin, J

Bench : Single Bench

Advocate : U. Srivastava, for the Appellant; Raj Birbal and Raavi Birbal, for the Respondent

Final Decision : Dismissed

Judgement

Manmohan Sarin, J.—Petitioner by this writ petition filed in September, 2004 seeks quashing and setting aside of the orders dated 12th March, 1998, 11th March, 2003 and 27th August, 2003.

2. By order dated 12th March, 1998, petitioner's representation dated 12th November, 1997 was rejected. Petitioner claimed promotion to the post of Assistant Director from the date his junior, prior to his reversion, was promoted. Subsequent applications and petitions were rejected by the Competent Authority vide orders dated 12th March, 2003. The last one being the communication dated 27th August, 2003, by which petitioner was informed that his request for reconsideration of restoration of his seniority in the grade of Section Officer and promotions thereafter, had been re-examined and could not be acceded to.

3. The facts giving rise to the present writ petition may be briefly noted.

(i) Petitioner had been employed with respondents as U.D.C w.e.f. 6th November, 1973. He was promoted as Section Officer in the pay scale of Rs. 650-1200 and transferred to the Project Office, Hyderabad on 16th October, 1986. Petitioner sought his re-transfer to Delhi on account of his mother's illness who had

suffered a cardiac arrest. Additionally, petitioner's wife was employed with a Government of India Undertaking in New Delhi and he was the only male member to look after the family. He stated that separation from his daughter was also unbearable and requested for transfer to the corporate office or being posted at Jaipur, where a vacancy had arisen.

(ii) The respondents considered the request for re-transfer to Delhi sympathetically but did not accede to the same, due to non-availability of a vacant post of A.D.(G)/S.O at the Corporate Office. Petitioner made number of requests in writing for re-transfer to Delhi. Petitioner developed a skin disease namely psoriasis which virtually crippled his movement in Hyderabad. Petitioner was advised to take treatment at Safdarjung Hospital, New Delhi. He sought transfer on account of his illness.

(iii) As per record, petitioner took frequent trips to Delhi and remained on leave without pay for seven months w.e.f 25.8.1988 to 10.4.1989. Petitioner claimed that on account of his health and other problems, it was not safe for him to live alone at Hyderabad. He attached medical prescriptions and recommendations to that effect. Vide letter dated 19th December, 1989, he notified that based on medical findings, it was not safe for him to live at Hyderabad in view of his deteriorating health and family problems. He requested that if it was not possible to transfer him to the same post, he may be transferred to the original post i.e to the post of Senior Assistant. He further gave an undertaking that he would not claim promotion as a Section Officer. Petitioner, thereafter along with the said request submitted a medical certificate recording that "he (petitioner) was suffering from endogenous Depression with suicidal tendencies. I strongly recommend that Mr. Malhotra should not stay alone without his family." This was followed by another letter which is reproduced for facility of reference:-

" In continuation of my request dated 11th March, 1990, I submit herewith an undertaking on Rs. Ten Non Judicial stamp paper. Kindly take humanitarian consideration in my case as my family is starving since I am without pay for last more than one year due to my illness."

(iv) The undertaking given was to the following effect:-

(i) "that I am presently working as Section Officer at P.O. Hyderabad.

(ii) that I have requested the Corporation of my own volition for reversion to the post of Senior Assistant and posting to Corporate Office.

(iii) that in the event of my request being acceded to, I hereby undertake that I will not represent or take any action legal or otherwise for restoration of my position.

(iv) that I have opted for reversion in my full senses and not under duress or any kind of pressure.

(v) that I have carefully understood the consequences of reversion and shall

abide by them.

(vi) that reversion to my original post at Corporate Office does not confer on me the right to stay at Corporate Office for ever in future."

4. The foregoing correspondence, as noted, would show that petitioner had relentlessly pursued his case for re-transfer. He requested for re-transfer even at the post of Senior Assistant so as to enable him to be with his family. Petitioner had pleaded his mother's sickness, his own failing health and the fact that for more than a year he had taken leave without pay and not worked at Hyderabad as grounds for transfer. It was made clear to the petitioner that there was no post of Section Officer available, upon which he had prayed for being posted as Senior Assistant and tendering his undertaking that he had opted for reversion voluntarily without any duress or pressure and would not claim restoration of his position. In these circumstances, it is the respondent's case that they acceded to the request of the petitioner.

Petitioner was relieved from his posting at Hyderabad and joined the corporate office on reversion as Senior Assistant on 15th June, 1990.

5. Petitioner continued to serve at New Delhi from 1990 and was again promoted in due course to Section Officer in June, 1993. His pay was re-fixed on promotion as Section Officer in 1993.

It was after being posted as Section Officer that petitioner commenced complaining of alleged discrimination in not having been posted back at the Headquarters while others had been accommodated. Petitioner raised the grievance that he was now required to serve again a two years stint as a Section Officer for being considered for promotion to the rank of Assistant Director. Petitioner claimed that he be given the grade from the period when he was promoted as Section Officer prior to his reversion, and period of service be accordingly counted, contrary to the undertaking earlier given. It may also be noted that petitioner was again promoted on 16th July, 1997 to the post of Assistant Director (Gen.).

6. Petitioner places reliance on the observations of the Grievances Redressal Committee dated 21st November, 1994 and the legal advice on the validity of the undertaking. As regards the enforceability of the undertaking, petitioner places reliance on Secretary-cum-Chief Engineer, Chandigarh Vs. Hari Om Sharma and Others, where the Supreme Court had disapproved and declined to enforce an undertaking obtained from an employee that he would not claim salary of the higher post or any other post. The said undertaking was held to be illegal besides observing that " Government being a model employer could not be permitted to rely on such undertaking."

7. Records had been called for from the respondents and perused. Record shows that during his posting as Section Officer from 15th July, 1987 till his reversion to the Corporate Office on 15th June, 1990 i.e a period of three years, petitioner

attended the office only for a period of 257 days. Petitioner gave primacy to his personal and family circumstances as against requirement and exigency of service.

8. Petitioner was persistent on his demand to be re-posted at Delhi. He was repeatedly advised by respondents that in the absence of any post of a Section Officer it was not possible to accommodate him at the Corporate Office. Petitioner thereupon on his volition sought that he be re-transferred to Delhi even in the position of Senior Assistant which was finally acceded to by the respondents. Petitioner had also furnished an undertaking of his own as noted earlier.

9. Petitioner returned to Delhi as Senior Assistant till he was promoted again as Section Officer in June, 1993. Petitioner did not from 1990 to 1993 raise any protest or claim seniority on the basis of his earlier posting as Section Officer. Petitioner in due course was also promoted as Assistant Director on 16th July, 1997. Petitioner thereafter began the saga of representations seeking seniority based on the earlier period of his service as Section Officer. He sought seniority from the time juniors to him were promoted as Section Officer. Petitioner also complained of hostile discrimination inasmuch as other employees were accommodated in similar circumstances, by giving temporary assignments till the vacancy arose. Perusal of the record shows that it was at petitioner's own volition that he was posted to Delhi on reversion. An undertaking was also furnished by him voluntarily without any pressure or coercion as is now sought to be contended. This is evident from the fact that it was only after a period of three years, when he had again been promoted as Section Officer, he commenced protesting about the loss of seniority which belies the claim of any coercion or pressure by respondents in obtaining the undertaking.

10. Reliance on Secretary-cum-Chief Engineer, Chandigarh v. Hari Om Sharma and Ors. (supra) is also misplaced inasmuch as the Supreme Court was concerned with a case of enforcement of an undertaking given by a person of not claiming his salary of the higher post to which he was posted as a stop gap arrangement. The cited case was one where the person was performing the functions of a higher post and he was sought to be denied the compensation on the basis of the undertaking. While in the present case, the petitioner discharged the duties of a Senior Assistant during the relevant time. Not only this, transfer was sought by the petitioner for his own personal reasons and the respondents themselves were not willing to post him to Delhi since he had been sent on promotion. Petitioner, as noted earlier, for the entire tenure of over three years at Hyderabad remained absent from duty for more than two years. Reference in this connection may be made to Government of Andhra Pradesh and Others Vs. M.A. Kareem and Others, . The court was considering in the cited case whether the LDCs working in District units of Andhra Pradesh Police who had opted for transfer to Chief Office, where service conditions were better and had given undertaking to the effect that they would not claim benefit of their past service,

could now claim the same in view of option now being considered of counting service for the purpose of seniority. The court observed as under:-

"However, so far as the respondents and the two others were concerned, they found it in their own interest to forgo their claim of seniority on the basis of their past services and they did so. It is significant to note that their letters Annexure "E" series were sent to the Inspector General of Police many months after the issuance of Annexure "B" and they were allowed to join the Chief Office on clear understanding that they would not be entitled to count their past services. It is, Therefore, idle to suggest that the respondents can now turn back and repudiate their commitment expressly made many months after Annexure "B".

11. Applying the above principle, petitioner who had secured transfer back to Delhi by giving up his promotion, opting for reversion cannot be permitted now to agitate the said claim. It may also be noted that vide a separate order dated 16th March, 1994, the pay of the petitioner was re-fixed w.e.f 15.6.1990 giving him the grade of Senior Assistant with benefit of protection of pay as provided in FR 22(a)(i) and 22(c).

12. There is yet another good reason to deny this belated claim sought to be made in 2004. The respondents had offered voluntary retirement scheme. Petitioner duly opted for the same vide his letter of 12th March, 2003. It was duly accepted on 1st August, 2003 and he had been permitted to retire w.e.f 31st August, 2003 under the REC Voluntary Retirement Scheme. Petitioner duly received his exgratia payment under the scheme equivalent to 49 months pay and other benefits totaling Rs. 14,43,159/-. This is apart from CPF and other amounts totalling above Rs. 10 lakhs. Petitioner now seeking enforcement in the writ petition of his claim for pay revision and promotion cannot be permitted to do so in terms of the judgment of the Supreme Court in A.K. Bindal and Another Vs. Union of India (UOI) and Others, . The Supreme Court held that:-

" a considerable amount is to be paid to an employee ex gratia besides the terminal benefits in case he opts for voluntary retirement under the Scheme and his option is accepted. The amount is paid not for doing any work or rendering any service. It is paid in lieu of the employee himself leaving the services of the company or the industrial establishment and foregoing all his claims or rights in the same. It is a package deal of give and take. That is why in the business world it is known as "golden handshake". The main purpose of paying this amount is to bring about a complete cessation of the jural relationship between the employer and the employee. After the amount is paid and the employee ceases to be under the employment of the company or the undertaking, he leaves with all his rights and there is no question of his again agitating for any kind of his past rights with his erstwhile employer including making any claim with regard to enhancement of pay scale for an earlier period. If the employee is still permitted to raise a grievance regarding enhancement of pay scale from a retrospective date, even after he has opted for Voluntary Retirement Scheme and has accepted the amount paid to him, the whole purpose of introducing the Scheme would be

totally frustrated."

In view of the foregoing discussion, writ petition is devoid of merit and is liable to be dismissed and is dismissed.