

(2010) 03 DEL CK 0174

In the Delhi High Court

Case No : Writ Petition (C.) No. 1261 of 2010 and CMs No's. 2645-46 of 2010

Yashpal

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 03-03-2010

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226

Delhi Police (Promotion and Confirmation) Rules, 1980 — Rule 17, 8

Citation : (2010) 03 DEL CK 0174

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

Bench : Division Bench

Advocate : R.K. Vats, for the Appellant; Sameer Choudhary, for Respondent No.1, Amitabh Marwaha, and Amandeep Joshi, for GNCTD, for the Respondent

Final Decision : Dismissed

Judgement

Anil Kumar, J.—The petitioner, Shri Yashpal, who had been awarded punishment of censure on 5th September, 2000; 14th December, 2000; 11th July, 2007 (3 censures) and 18th December, 2008, had challenged his consideration for promotion in the DPC held on 13th January, 2009 following the guidelines dated 29th December, 2008 contending that since the vacancies had arisen prior to 29th December, 2008, therefore, the DPC should have followed the guidelines dated 7th February, 2005, which prayer was declined by the Tribunal in OA No. 1011 of 2009 titled Shri Yashpal v. Union of India and Ors. by order dated 4th September, 2009 which is challenged by the petitioner in the present writ petition.

2. According to the petitioner, 7612 vacancies had occurred on 26th September, 2008 and communicated to Commissioner of Police on 18th November, 2008, therefore, the DPC which was held on 13th January, 2009 should have followed the circular dated 7th February, 2005 and not the circular dated 29th December, 2008 laying down the guidelines for DPC.

3. The Departmental Promotion Committee is constituted for ascertaining the

promotion of the personnel under Rule 8 of Delhi Police (Promotion & Confirmation) Rule, 1980. Rule 17 contemplates that confirmed Sub Inspector (Executive) who have put in a minimum of six years service in the rank of Sub Inspector shall be eligible and the selection shall be made on the recommendation of the DPC.

4. This is not disputed that the guidelines are issued from time to time crystallizing parameters to be followed for admission to promotion list. The salient features of the guidelines of 7th February, 2005 contemplated that suitability of the employees for promotion shall be their service records with particular reference to confidential reports for five preceding years and officers having at least three "Good" and "Above Average" reports without any "Below Average" or "Adverse" report even for a small period during last five years would be empanelled. The service record during preceding 10 years was to be taken into account with particular reference to the gravity and continuity of punishment and punishment on account of corruption and moral turpitude, was to be viewed seriously. Officers having been awarded major/minor punishment in preceding five years on charge of corruption, moral turpitude and gross dereliction of duties were not to be empanelled, however, officers who had been awarded censure during last six months could be allowed to be brought on promotion list.

5. These guidelines issued on 29th December, 2008 also contemplated assessment of the suitability of personnel on the basis of their service record with particular reference to the confidential report for five preceding years irrespective of qualifying service prescribed in the service or recruitment rules. The new guidelines also contemplated that the officers may not be empanelled in case of major punishment awarded to them during preceding five years on the charge of corruption, moral turpitude, gross dereliction in discharge of duties and even the officers awarded any minor punishment in preceding five years on charge of corruption, moral turpitude, etc., may not be empanelled.

6. The petitioner on the basis of information rendered to him under Right to Information Act, 2005 had asserted that the vacancies of the Inspector (Executive) for financial year 2008-2009 were drawn up on 16th September, 2008 and the Government of India had sanctioned 7612 additional posts in various ranks including Inspector (Executive). This was also averred by the petitioner that the approval for creation of 7612 posts was conveyed by letter dated 18th November, 2008 by the Ministry of Home Affairs and the DPC held on 13th January, 2009, had recommended for promotion of 73 Sub Inspector (Executive) as Inspector (Executive), however, the petitioner was not promoted by said order.

7. Before the Tribunal, the petitioner had challenged the proceedings of the DPC solely on the ground that since the vacancies had been created in November, 2008, therefore, DPC which was held on 13th January, 2009 should have followed the guidelines issued on 7th February, 2005 and not on 29th December, 2008. According to petitioner he has a vested right for consideration for inclusion

in promotion list "F". He contended that consideration for promotion had necessarily to be based on the circular dated 7th February, 2005 as the circular dated 29th December, 2008 was not in existence on that date the vacancies had arisen. Learned Counsel for the petitioner had also relied on *Chairman, Railway Board and others Vs. C.R. Rangadhamaiah and others*, ; *Y.V. Rangaiah and Others Vs. J. Sreenivasa Rao and Others*, ; *Hira Lal v. Government of NCT of Delhi and Ors.* 2002 II AD (Delhi) 878 (Delhi High Court); *Maharashtra State Road Transport Corporation and Others Vs. Rajendra Bhimrao Mandve and Others*, and *Ashok Kumar v. Slum and J.J. Deptt. MCD and Ors.* 2005 VII AD (Delhi) 429 (Delhi High Court) in support of his plea and contentions.

8. The respondents had opposed the claim of the petitioner contending inter alia that DPC had full discretion to devise its own method and procedure for objective assessment of the suitability of the candidates based on the guidelines for DPC circulated by Department of Personnel and Training (DoPT) by Office Memorandum dated 10th April, 1989. According to respondents, the DPC was constituted for financial year and the latest guidelines in existence on the date of meeting of the DPC were, therefore, considered and as the DPC had been held on 13th January, 2009, therefore, the latest guidelines of 29th December, 2008 were taken into consideration.

9. The Tribunal considered the judgments relied on by the petitioner and distinguished them as they were for selection on the basis of examination etc. and held that the precedents relied on by the petitioner were clearly distinguishable. In *Maharashtra State Road Transport Corporation and Ors.* (supra), it was noticed that the circulars issued were inadequate and rather did not contain any reference to the driving test and therefore, weightage was to be given only for written test and interview. The clarificatory circular was also issued, however, on the basis of the ratio of the same judgment, it cannot be held that the DPC which held on 13th January, 2009 should not have followed the guidelines of 29th December, 2009. The Tribunal also found the case of *Ashok Kumar* (supra) to be tangentially different and also observed that another judgment relied on by the petitioner, i.e., *Siraj Khan and Ors. v. Union of India* 2004 (78) DRJ 137 (Delhi High Court) were again far off the marks.

10. Considering the precedents relied on by the petitioner, this Court is also of the opinion that the said precedents have no application in the present case of the petitioner. It cannot be disputed that the ratio of any decision must be understood in the background of the facts of that case. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in it. It must be remembered that a decision is only an authority for what it actually decides. It is well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision. The ratio of one case cannot be mechanically applied to another case without having regard to the fact situation and circumstances in two cases. The Supreme Court in *Bharat Petroleum Corporation*

Ltd and Anr. v. N.R. Vairamani and Anr. AIR 2004 SC 778 had held that a decision cannot be relied on without considering the factual situation. In the judgment the Supreme Court had observed:

Court should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes.

11. In Padmasundara Rao and Others Vs. State of Tamil Nadu and Others, , the Supreme Court had held as under:

There is always a peril in treating the words of judgment as though they are words in a legislative enactment and it is to be remembered that judicial utterances are made in setting of the facts of a particular case. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusion in two cases.

12. In Rafiq Vs. State of U.P., it was observed as under:

The ratio of one case cannot be mechanically applied to another case without having regard to the fact situation and circumstances obtaining in two cases.

13. On perusal of the precedents relied on by the petitioner, it is apparent that they are distinguishable and the petitioner cannot claim the relief on the basis of the ratio of the same. Even in C.R. Rangadhamaiah (supra), the maximum limit of running allowance for computation of pension and retirement benefit were reduced retrospectively and it had affected all the retired employees. In the circumstances it was held that retrospective reduction was in violation of Articles 14 and 16 of the Constitution. The ratio of the said judgment has no application to the present facts and circumstances of the case of the petitioner. Similarly, in Y.P. Rangaiah (supra), the rules provided that panel for promotion would be prepared by September of each year, however, for 1975, panel was not prepared on 1st September, 1976 and was delayed for more than one year and thereafter the rules had been amended in March 1977. In contra distinction, for the panel which was to be prepared in 2008-2009, in case of the petitioner, the promotion list was drawn up on 16th September, 2008 and the DPC had considered it on 13th January, 2009 and had recommended the promotion according to the latest guidelines of 29th December, 2009. Consequently, the ratio of Y.P. Rangaiah (supra) relied on by the petitioner is also not applicable to the facts and circumstances of the case of the petitioner.

14. Learned Counsel for the petitioner has also very emphatically relied on guidelines on Departmental Promotion Committee, Part II, dealing with frequency of Departmental Promotion Committee Meeting's Clause 3.1. The relevant clause 3.1 is as under:

3.1 The DPCs should be convened at regular annual intervals to draw panels which could be utilised on making promotions against the vacancies occurring during the course of a year. For this purpose it is essential for the concerned appointing authorities to initiate action to fill up the existing as well as anticipated vacancies well in advance of the expiry of the previous panel by collecting relevant documents like CRs, integrity certificates, seniority list etc. for placing before the DPC. DPCs could be convened every year if necessary on a fixed date, e.g., 1st April or May. The Ministries/Departments should lay down a time schedule for holding DPCs under their control and after laying down such a schedule the same should be monitored by making one of their officers responsible for keeping a watch over the various cadre authorities to ensure that they are held regularly. Holding of DPC meeting need not be delayed or postponed on the ground that recruitment rules for a post are being reviewed/amended. A vacancy shall be filled in accordance with the recruitment rules in force on the date of vacancy, unless rules made subsequently have been expressly given retrospective effect. Since amendments to recruitment rules normally have only prospective applications, the existing vacancies should be filled as per the recruitment rules in force.

15. Perusal of Clause 3.1 reveals that it contemplates that holding of DPC meeting is not to be delayed or postponed on the ground that recruitment rules for a post are being reviewed/amended and a vacancy is to be filled in accordance with the recruitment rules in force on the date of vacancy, unless Rules made subsequently had been expressly given retrospective effect. This is not the case of the petitioner that holding of DPC was delayed or postponed on account of any amendment in the recruitment rules. Delhi Police (Promotion & Confirmation) Rules, 1980 had not been amended nor for any proposed amendment, the DPC was postponed nor there is any delay in holding the DPC as the promotion list for 2008-2009 was drawn up on 16th September, 2008 and the DPC was held on 13th January, 2009.

16. This also cannot be disputed by the learned Counsel for the petitioner that DPC has full discretion to devise its own method and procedures for objective assessment of the suitability of the candidates as per the guidelines for DPCs circulated by the Department of Personnel and Training (DoPT) by its Office Memorandum dated 10th April, 1989. The guidelines dated 29th December, 2008 are not alleged to be not in consonance with and in accordance with the guidelines of DoPT. In the circumstances, it cannot be contended by the counsel for the petitioners that the guidelines of 7th February, 2005 should have been followed by the DPC which met on 13th January, 2009 when the guidelines dated 29th December, 2008 had already come in existence which guidelines are also in

consonance with DoPT Memorandum dated 10th April, 1989. This has also not been disputed by the petitioner that there is no discrimination in consideration of all the candidates by the DPC and the right of the respondents to frame the guidelines has not been denied. The petitioners have also not contended that the guidelines dated 29th December, 2008 are perverse or suffers from any other lacunas. In the circumstances merely because the name of the petitioner has not been recommended, it cannot be held that the guidelines of 29th December, 2008 should not have been followed by the DPC held on 13th January, 2009.

17. For the foregoing reasons and in totality of facts and circumstances, this Court does not find any illegality or irregularity in the order of the Tribunal which would require interference by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India. The writ petition is without any merit and it is, therefore, dismissed.

18. All the applications are also disposed of.