

Arvind Kumar Vs. Uoi and anr.

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Court : Delhi

Decided On : Sep-02-2013

Judge : Pradeep Nandrajog

Appellant : Arvind Kumar

Respondent : Uoi and anr.

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI % Date of Decision: September 02, 2013 + W.P.(C) 6597/2012 ARVIND KUMAR Represented by: Petitioner Ms.Aishwarya Bhati, Adv. with Mrs.Sanjoli Mittal, Advocate. Versus UOI AND ANR Represented by: Respondents Mr.R.V.Sinha, Adv.for R-1. Mr.Naresh Kaushik, Adv. with Ms.Pallav Pandey and Mr.Vardhaman Kaushik, Advocates for R-2/UPSC. CORAM: HON'BLE MR. JUSTICE PRADEEP NANDRAJOG HON'BLE MR. JUSTICE V. KAMESWAR RAO PRADEEP NANDRAJOG, J.

CM No.11098/2013 1. A large number of Original Applications have been decided by a Full Bench of the Central Administrative Tribunal vide order dated May 09, 2011 and we find that the said order is a subject matter of challenge in not only the above captioned writ petition filed by Arvind Kumar but even by the writ petitioners of W.P.(C) No.4097/2011, W.P.(C) No.4616/2011, W.P.(C) No.7619/2011, W.P.(C) No.2176/2012, W.P.(C) No.2523/2012, W.P.(C) No.2524/2012, W.P.(C) No.2525/2012, W.P.(C) No.2526/2012, W.P.(C) No.2527/2012, W.P.(C)

No.5857/2012, W.P.(C) No.5858/2012 and W.P.(C) No.5859/2012.

2. That apart the Union of India has also filed a writ petition before this Court. In that said writ petition this Court granted interim directions vide order dated April 17, 2012 permitting the Government to make promotions as per select list leaving 9 posts vacant which also included the petitioner herein namely Arvind Kumar.

3. Against the order dated April 17, 2012 certain direct recruits Section Officer of 1995 and 1996 batch preferred SLP (C) CC No.9653/2012, subsequently numbered as SLP (C) No.17471/2012 before the Supreme Court. The Supreme Court vide its order dated May 16, 2012 directed the order dated April 17, 2012 to be kept in abeyance.

4. When all the writ petitions referred to in paragraph one above were listed before this Court on January 29, 2013 and were adjourned to February 04, 2013 since service on the respondents in some of the writ petitions were not completed declined any interim stay in the instant writ petition.

5. The said order of this Court was challenged by the petitioner by and under Special Leave Petition (C) No.16187/2013. The said petition was directed to be listed along with SLP (C) No.17471/2012. When said SLPs were listed before the Supreme Court on July 12, 2013 the Supreme Court passed the following order: We find no reason to keep these special leave petitions pending since the main matters are already pending before the High Court. This Court, on 16.05.2012 has passed an interim Order in SLP (C) No.17471 of 2012 which we find no reason to disturb. However, if any application is preferred by the appellant before the High Court, the same would be disposed of uninfluenced by the orders passed by this Court. Counsel for the Union of India herein have stated that they have made ad-hoc promotions to the post of Under Secretaries. Promotions made in the meantime shall be subject to the final outcome of the writ petition, as decided by the High Court. The special leave petitions are disposed of accordingly.

6. The petitioner has now preferred CM No.11098/2013 praying for a positive relief by way of an interim direction that the respondent be directed to promote the

petitioner and similarly situated direct recruits of the year 1997 to the post of Deputy Secretary on ad-hoc basis in accordance with the settled common seniority list.

7. We had heard Ms.Aishwarya Bhati learned counsel for the petitioner who submitted that there are only ten direct recruits of 1997 batch who are seeking their promotion to the post of Deputy Secretary as according to her more than thirty one persons junior to the petitioner have already been promoted and four hundred more persons junior to the petitioner are likely to be promoted. She would further submit that the Tribunal should have granted relaxation to the petitioner also by one more year over and above two years granted by the Tribunal which would have advanced the promotion of the petitioner from 2006 to 2003. She would submit that since the process of direct recruitment has been abolished there would be no further claimants seeking a similar benefit as is being claimed by the petitioner in this application. She would further submit that because of creation of 1400 vacancies in the grade of Section Officer many of the promotee section officers who even though junior to the petitioner, but having the eligibility of 8/5 years, have been promoted to the post of Under Secretary/Deputy Secretary on regular/ad-hoc basis overlooking the fact that the petitioner herein was/is senior to them.

8. Mr.Naresh Kaushik learned counsel appearing for UPSC would submit that the petitioner and nine other similar situated persons do not have the eligibility of 5 years for promotion to the post of Deputy Secretary and thus they cannot be promoted on ad-hoc basis to said post. Merely because juniors, having the required eligibility service, have been promoted is no ground to accept the prayer of the petitioners.

9. Mr.R.V.Sinha learned counsel appearing for respondent No.1 would take a similar stand as has been taken by Mr.Naresh Kaushik on behalf of UPSC.

10. We have considered the contentions so made by learned counsel for the parties. It is seen that the petitioner herein was appointed as a direct recruit in the year 1997 and was promoted to the post of Under Secretary in the year 2006 after attaining the eligibility of 8 years. His eligibility for the post of Deputy Secretary

would commence only in the year 2006 which would mean that he would have attained eligibility only in the year 2011 not before that. Since the promotions made by the respondents to the post of Deputy Secretary relates back to USSC-2003 and not 2011 the petitioner would not be entitled to any directions to the respondent for promoting him to the post of Deputy Secretary unless the petitioner succeeds in the writ petition.

11. In any case, the issue which has been raised by the petitioners in the writ petition for granting him a similar relaxation as has been granted by the Tribunal with regard to the direct recruit Section Officer of the batch 1995 and 1996 has to be gone into in the writ petition and we simply note that two years relaxation was granted by the Tribunal on account of reading some office memorandums to mean that if a junior has become eligible to be considered for promotion and a senior has not rendered requisite service, two years relaxation in the eligibility qualifying service can be granted.

12. Even the respondents have challenged the grant of such relaxation by the Tribunal in the impugned order and for which a separate writ petition has been filed.

13. Till such time the issue raised in the writ petitions are determined, no relief can be granted at this stage for the reason it is settled law that mandatory ad interim orders can only be passed requiring status quo ante to be restored as per the position which existed immediately prior to when the offending act was committed. In matters of promotion it would not be proper to grant a mandatory ad interim order requiring the department to grant relaxation in the qualifying service for being considered for promotion and thereafter grant the promotion.

14. We note that the Supreme Court while considering SLP(C) 17471/2012 and the SLP(C) 16187/2013 has ordered that the promotions made in the meantime shall be subject to the final outcome of the writ petition as decided by the High Court and thus we see no further order requiring to be passed.

15. The application is accordingly dismissed re-affirming once again that any promotion made would be subject to final orders which would be passed in the writ

petition. (PRADEEP NANDRAJOG) JUDGE (V. KAMESWAR RAO) JUDGE
SEPTEMBER 02 2013 mamta

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