

Mcd and ors. Vs. R.B. Tomar

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Court : Delhi

Decided On : Nov-03-2014

Judge : S.Ravindra Bhat

Appellant : Mcd and ors.

Respondent : R.B. Tomar

Advocate for Def. : Ms. Jyoti Singh, Ms. Tinu Bajwa

Advocate for Pet/Ap. : Mrs. Biji Rajesh

Judgement :

\$~11 * IN THE HIGH COURT OF DELHI AT NEW DELHI % DECIDED ON:

03. 11.2014 + W.P. (C) 587/2011 MCD AND ORS. Petitioners Through: Mrs. Biji Rajesh, Advocate. versus R.B. TOMAR Respondent Through: Ms. Jyoti Singh, Sr. Advocate with Ms. Tinu Bajwa, Sh. Amandeep Joshi and Sh. Sameer Sharma, Advocates. CORAM: HON'BLE MR. JUSTICE S. RAVINDRA BHAT HON'BLE MR. JUSTICE VIPIN SANGHI S.RAVINDRA BHAT, J.

(OPEN COURT) 1. The petitioner, i.e., the MCD claims to be aggrieved by the order of the Central Administrative Tribunal (CAT) dated 19.11.2009 in T.A. No.1154/2009. That application was preferred by the respondent (hereinafter referred to as the applicant).

2. The admitted facts are that the applicant was appointed at Labour Welfare Superintendent on 25.01.1990 and was promoted as Assistant Labour Welfare Officer on ad hoc basis on 27.03.2002. In the meanwhile, claiming to act upon directions of this court in writ proceedings i.e. W.P. No.1842/2004 (Krishan Kumar Awasthi vs. MCD, decided on 16.09.2005) the MCD made separate orders on 29.03.2007 - superseded by an order dated 16.04.2007 and later, yet another order of the same date granting W.P.(C)587/11 Page 1 promotion to Sh. Krishan Kumar Awasthi as Labour Welfare Superintendent. The last of these orders i.e. 16.04.2007 had the effect of granting promotion to Sh. Krishan Kumar Awasthi as Assistant Labour Welfare Officer on regular basis on 08.10.1999. Sh. Awasthi had, in turn, approached this Court complaining of illegality in non-consideration of his name and stating that he was in the same category as one Sh. V.M. John who was writ petitioner in W.P. (C) No.780/2004.

3. The order of 16.04.2007 itself clarified that the petitioner was senior to Sh. Awasthi. The relevant extract is as follows :

Consequent upon the above promotion, the vacancy position in the cadre of Assistant Labour Welfare Officer has been examined and it has been found that three Labour Welfare Superintendent namely Sh. V.M. John, Smt. Mamta Gaur and Sh. R.B. Tomar (SC) were also holding the post of LWS on regular basis under Director Recruitment Quota since 1989-91 and thus are senior to Sh. K.K.Awasthi. These 03 officials were promoted to the post of Assistant Labour Welfare Officer on 27.03.2002 on ad hoc basis because their seniors were granted ad hoc appointments to the next higher posts from the feeder cadre i.e. Assistant Labour Welfare Officer in the year 2002-03, in compliance of the Honble High Court (combined) orders dated 29.09.2000 in CWP No.1658/1993 & 438/99 titled as S.C. Kohli vs. MCD & Deepak Hastir & Ors. Vs. MCD respectively and thus they are still holding lien on the substantive post of ALWO under promotion Quota. The above order dated 29.09.2000 of the Honble High Court has been challenged by the MCD and the same has been admitted by the Honble High Court of Delhi as LPA No.122/2001, which is still pending. Further, W.P. (C) No.788/2004 and 11999/2006 titled as V.M. John vs. MCD are still pending in the Honble High Court of Delhi regarding regularization to the post of Assistant Labour Welfare Officer

w.e.f. 27.03.2002. However, Shri Krishan Kumar Awasthi, Labour Welfare W.P.(C)587/11 Page 2 Superintendent is hereby promoted to the post of Assistant Labour Welfare Officer in the pay scale of Rs.7500-12000/- on regular basis w.e.f. 8.10.1999 in strict compliance of Honble High Court orders dated 04.04.2007 notwithstanding his seniority, eligibility availability of regular vacancy of ALWO and accruing of only physical vacancy in the grade of Assistant Labour Welfare Officer. Financial benefits to the post of Assistant Labour Welfare Officer are restricted as per the provisions of FR-17. The above appointments promotions in respect of the petitioner have been made in strict compliance of Honble High Court order dated 04.04.2007 notwithstanding to DOPT, GOI instructions on promotions which provides for only regular promotions with prospective effect, the Recruitment Rules (1955 & 2000) of the post of Labour Welfare Superintendent and RRs (1996) of the post of Assistant Labour Welfare Officer, final seniority List of the post of Labour Welfare Superintendent dated 13.05.1998, supersession of the seniors and the vacancy position in the respective cadre. The Department retains its right to file an appeal/Review/SLP against above orders of Honble High Court as the case may be, so that it may not be taken as precedence.

4. The applicant approached the CAT complaining that - being senior to Sh. Krishan Kumar Awasthi, his claim for promotion as Assistant Labour Welfare Officer could not be ignored and furthermore, that he was entitled to that promotion with effect from 1993. The CAT, by its impugned order relied upon the order in the case of Mamta Gaur vs. MCD (O.A. No.845/2009, decided on 09.11.2009). The net effect of that order, as well as the impugned order, is that both the said individuals, i.e. the applicant and Ms. Mamta Gaur, being senior to Sh. Awasthi, were entitled to be considered for promotion in a like manner to the post of ALWO at least W.P.(C)587/11 Page 3 from the date from which he was given such benefit.

5. The MCD complains that the impugned order is incapable of implementation and points out that as against the sanctioned strength, currently at 7, more than 15 incumbents held the post. Learned counsel for the MCD relies upon the portion which is made part of the office order issued by it on 30.4.2010. It is pointed out that due to the policy of MCD, whereby ad hoc promotions have been granted to

several officers and subsequent successive ad hoc promotions have been granted, it is not possible to ascertain the correct position as to whether the lien to any particular post is free. At the same time, counsel urges that several such ad hoc promotees to further higher posts have drawn the pay-scales, earned increments in such posts and even retired from service in a normal course upon attaining the age of superannuation.

6. From the given set of undisputed facts, it is apparent that the applicant as well as Ms. Mamta Gaur and Shri V.M. John were undoubtedly senior to Sh. K.K. Awasthi. Whatever impelled the MCD to grant regular promotion to Sh. K.K. Awasthi - be it on reading or on misreading of the Courts order, it is undeniable that these three officers senior to Sh. Awasthi were not parties to the proceedings. None of the orders disclosed that this fact was made known to the Court when it insisted on compliance of its previous orders. In the circumstances, there can be no doubt that even though Sh. K.K. Awasthi was granted promotion with effect from a date in 1999, three seniors existed in the cadre. Therefore, as to the entitlement of these three senior officers to promotion, at least from the date of promotion of Sh. K.K. Awasthi, there can be no dispute or denial. W.P.(C)587/11 Page 4 7. As far as the MCDs difficulty in complying with the CATs order is concerned, this Court is of the opinion that the Corporation is to thank itself for this mess and cannot seek to benefit from its own wrong. The policy of ad hocism favoured by it and implemented over the years has resulted in a situation where even at the highest levels of cadres, its officers hold posts on ad hoc basis. It is not only that the officers are appointed on ad hoc basis, but apparently they are granted one, two or even three promotions, successively based upon the hierarchical nature of various cadres, on purely ad hoc basis. The stark undesirability of such course of events is highlighted in the present proceedings, where the MCD expresses its bewilderment as to what the true nature of entitlement of various individuals is, and how many posts can be treated as lien free and from what date or dates. Having regard to this, the Court is of the opinion that the judgment rendered by this court cannot be defeated on account of MCDs policy of ad hocism.

8. The following directions are, therefore, issued to the MCD:- (i) The MCD is hereby directed to treat promotions from the post of ALWO to further higher grades made by it on ad hoc basis as regular, provided such promotions are made on the basis of evaluation in accordance with the rules, and so long as the individuals or incumbents holding such higher posts do so in accordance with their seniority. The resultant vacancies - free of liens, shall be taken into account for implementation of the CATs order. (ii) The MCD is also directed to treat all officers promoted as ALWO to further higher promotional posts on ad hoc basis, and who have retired (against whom no disciplinary proceedings are pending post retirement), as regular incumbents at the time when they superannuated from the service. W.P.(C)587/11 Page 5 This shall also ensure that the posts so held and eventually vacated by such incumbents are treated as lien free. (iii) Keeping the above directions in para Nos.(i) and (ii) in mind, a Review DPC shall be conducted for the cadre of ALWO post, in order to implement all orders of the CAT as affirmed by this Court. The result of such Review DPC would be to assign the concerned dates of promotion to those entitled to it in accordance with the rules and other terms and conditions of the service. It is made clear that, in the event any employee or any officer (including Sh. K.K. Awasthi) is deemed not entitled to promotion from a particular date but from a later date, and/or such officer has since retired from service, no consequential orders giving effect to reversion shall be made. Any such consequent orders will be made on purely notional basis. Such orders shall not adversely affect the pension or terminal benefits of such superannuated employees, or officers nor shall MCD seek to recover any excess amount paid to the officer on that account.

9. The writ petition is disposed of in the above terms. S. RAVINDRA BHAT (JUDGE) VIPIN SANGHI (JUDGE) NOVEMBER03 2014 srb W.P.(C)587/11 Page 6 W.P.(C)587/11 Page 7