

Shri Pramod Sharma and ors. Vs. Delhi Development Authority and ors.

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Court : Delhi

Decided On : Dec-17-2004

Reported in : 2005(80)DRJ184; 2006(2)SLJ94(Delhi)

Judge : Manmohan Sarin, J.

Appeal No. : WPC 1118/2003

Appellant : Shri Pramod Sharma and ors.

Respondent : Delhi Development Authority and ors.

Advocate for Def. : Arun Birbal, Adv. for Respondents 1-2 and ; Ashok Bhasin and ;

Advocate for Pet/Ap. : Rajesh Benati, Adv

Judgement :

Manmohan Sarin, J.

1. Petitioners by this petition seek quashing of list of Junior Engineer (Civil) Annexure P-6, dated 5th February, 2003 at page 66. Petitioners also seek a mandamus that Junior Engineers (Civil) who were selected after interview by MCD (Annexure P-3) be placed on deputation. On 13th May, 2002, DDA had issued a circular regarding temporary filling up the posts of Junior Engineers (Civil) which were lying vacant in the Engineering Wing of General Wing of MCD on deputation

basis. The scale of pay was Rs. 5000-8000 plus allowances. The eligibility qualification given was Degree in Civil Engineering or Diploma in Civil Engineering with two years professional experience. The circular invited applications from Junior Engineers (Civil) through proper channel. MCD also requested DDA to nominate 25 Junior Engineers who were not facing any departmental action or police complaints along with their complete biodata and character rolls and VCR for the last five years.

2. In the event, DDA sent biodata of 168 Junior Engineers to MCD. MCD conducted interview on 26th October, 2002 and thereafter issued an office order No.HC-II/Engg./Estt/2002 /1510 dated 12th November, 2002. The order reads as under:-

'The following officials, working at Jr. Engineer (Civil) in Delhi Development Authority, are hereby appointed to the post of Jr. Engineer (Civil) on deputation basis in the Municipal Corporation of Delhi, in the pay scale of Rs. 5000-8000, with immediate effect initially for a period of one year or till such time the said posts are filled up by the direct recruitment whichever is earlier, on the usual terms and conditions of deputation.'

3. The candidates interviewed and selected by MCD were not released for deputation by DDA instead perusal of the case records and the files of DDA show that the Secretary to the Lt. Governor on instructions from Lt. Governor appears to have taken the following view:-

'For a deputation, it is unnecessary and inappropriate that receptive organization should undertake scrutiny process for the purpose of selection. 168 Junior Engineers have expressed their willingness to go to MCD on deputation. Let they be listed Serially in alphabetic order. Those figures at 5,9,13.....etc may be adopted. Commissioner, MCD may be advised.'

4. DDA thereupon processed the case and prepared the revised list purporting to be in terms of the directions given by Lt. Governor. During the course of hearing of this petition, a doubt had arisen whether the order had been passed by the Secretary of the Lt. Governor or the Lt. Governor had seen the file and issued the

said directions. The case was again put up before the Lt. Governor and an affidavit has been filed by Commissioner (Personnel), DDA that direction dated 1st December, 2002 was issued by Lt. Governor. It also bears his signatures. On 19th August, 2003, following order was passed by Lt. Governor:-

'The method of selection I have prescribed to avoid pick and choose at the receiving end. I have received complaints to suggest that the situation at the end of MCD was constrained by approaches from various quarters.'

5. It would be seen that controversy whether revised list was prepared at the instance of Secretary to Lt. Governor and not the Lt. Governor does not survive any longer. Respondent claims to have implemented the directions of the Chairman and Administrator and submitted the revised list. MCD had also accepted the said decision and the personnels as per the revised list joined the MCD on deputation. In fact the tenure of deputationists is already over and all the officers have been repatriated back to DDA.

6. Mr. Rajesh Benati, submitted that the grievance of the petitioners is that petitioners had been duly selected by receiving department by following the selection process of interview. However, on account of alleged complaints made to the Lt. Governor which have not been placed on record, their selection has been set at naught. This has resulted in merit being bypassed. Random selection process was arbitrary inasmuch it ignores the respective merits and service record. It proceeds on the assumption that all the 168 applicants have the same merit. Mr. Benati further demonstrates that even the criteria as laid down by the Lt. Governor has not been followed by DDA. The random method leaving a gap of four persons has not been followed inasmuch at candidates at Sr.nos.1 and 3, 36 and 37, 84 and 85 have been selected.

7. Mr. Arun Birbal on behalf of respondent-DDA submitted that petition itself has become in fructuous since all the officers stand repatriated to their parent cadre. A writ of mandamus as sought by the petitioners against DDA was also not maintainable. There is no inherent right to seek deputation. He submits that a person on deputation can always at any time be repatriated to his parent department either at the instance of receiving or parent department. There is no

vested right to continue on deputation.

8. Reliance has been placed on Kunal Nanda v. Union of India and Anr. : (2000)5SCC362 in support of the contention that a deputationist cannot assert his claim for permanent absorption on the borrowing department and can always and at any time be repatriated to his parent department.

9. To same effect is Ratilal B Soni and Ors v. State of Gujarat and Ors : (1990)ILLJ525SC . Reference may also be invited to Krishna Kumar Singh and Ors v. UOI and ors 2001 I.C.2276. The court after analysing number of decisions of the Supreme Court summed up the legal position as under:-

'The above decisions of the Supreme Court crystalise the position of a deputationist. He can neither insist to continue in the deputation post nor can insist for his absorption in the borrowing department. Besides, the parent department has the powers to recall him back at any time even before expiry of the period of deputation. This otherwise means that the powers of the parent department to refuse deputation is engrained in the powers to repatriate any any time before expiry of the term of deputation. That being the position, it is the parent department which is to take the final decision whether an employee would be allowed to go on deputation or not. This decision will obviously be based on a number of considerations including administrative expediency as well as the future career of the deputationist. The Court shall not normally interfere with such a decision of refusal when no case of discrimination is made out. The decision cannot be disturbed unless it is shown that it was for some oblique motive.'

10. Reference may also be invited to Abdul Rashid Wani v. State of J and K 1999 I.C.2196. In that case, petitioner sought mandamus against the respondents to compel them to depute him to Saudi Arabia on deputation along with other staff in connection with the impending Haj pilgrimage of Hajis to Saudi Arabia. The Court held that deletion or exclusion of his name from the said deputed staff does not violate any legal, service or other right(s) of the petitioner.

11. It is urged by Mr. Birbal that rather in the present case the record shows that the decision was taken bonafide by the Lt. Governor to obviate any favortism. The

Lt. Governor has recorded that he has received complaints that selection process at MCD's end was constrained by approaches from different quarters.

12. It is seen that in this case, DDA had simply forwarded the names of 168 candidates who were found to be eligible for deputation to MCD. The receptive department had carried out the selection process through interview. MCD, however, in its affidavit has conceded that power of sending officers on deputation lies with original/parent department and that DDA has right to send them on deputation after due selection.

13. Be that as it may, the MCD has accepted the revised list of officers sent on deputation. Even the deputationists have completed their tenure. In these circumstances, reliefs sought in the writ petition have become infructuous and cannot be granted. Mr. Benati only prays that in this case there was no reason to set at naught the selection process by MCD. In my view, the Lt. Governor being the highest constitutional authority in NCT of Delhi and as Administrator and Chairman of DDA has taken cognizance of certain complaints received by him, which tend to show that selection process at MCD could have been influenced by approaches from various quarters. Taking cognizance of this, he has chosen to prescribe a formula which has treated all 168 candidates as eligible. On the basis of the prescribed formula, a list was to be prepared in alphabetical order. No discretion was left either with Lt. Governor or MCD to select any individual officer for deputation. It proceeds on the assumption that all the 168 candidates were eligible and were treated alike in matter of ability and performance etc. It may also be noted that this decision is being taken in respect of officers at Junior Engineer level for deputation for one year. It is not a selection to a top executive single post or to a high functionary post where comparative merit would be the prime consideration.

14. In view of the foregoing discussion and the principles enunciated in the judicial pronouncements noted in paras 8,9, and 10 above, the petitioners would not be entitled to the relief as sought.

15. There is, however, an aspect which needs to be addressed. Petitioners have successfully demonstrated that in the list of candidates for deputation sent by

respondent-DDA, the formula for random selection and the criteria as laid down by the Lt. Governor has not been followed. Petitioner has successfully demonstrated that in the alphabetically arranged list of 168 candidates, the persons who have been sent, appear at Sr.Nos.1,4,10,13,17, 22,25, 33,36, 37, 42, 45, 49, 52, 56, 61, 65, 69, 73, 76, 84,5, 89, 94, 97, 101, 106, 110, 113, 119, 121, 124 and so on. It would, thus, be seen that the persons selected are not those with a gap of four, as envisaged.

16. Respondents were called upon to explain. An additional affidavit was filed by Shri Sunil Sharma, Commissioner (Personnel). Respondent admit the error but claim the same to be a bonafide one, in an attempt to follow the direction of the Lt. Governor in spirit and letter. It is averred that to obviate the possibility of human error it was decided to feed all the names on computer and use available command to generate the alphabetical list. Mr. Birbal submits, on the basis of affidavit, that erroneously for some the full name was entered while for others, the initials. Besides while entering the names, space had been left which resulted in the error. Computer had generated the alphabetical list on the basis of initials and full name and space as fed by the respondents. In this way candidates appearing at Sr.No.84 and 85 i.e. Navin Kumar and Navin Kumar Aggarwal are sought to be explained. Even if the Explanationn as tendered by the respondents and the errors occurring on account of commands to the computer and in entering initials and the first name is accepted, a cursory manual check would have shown that pattern of random selection based on numbers had not been followed. Accordingly, responsibility for this lapse cannot be over-looked. The petitioners' allegation is that the persons who have been sent and names erroneously included were those who were the favored lot. Some of them even faced departmental enquiry and corruption charges in MCD during the period of deputation. No particulars of these, in any case, have been furnished. Besides, the petitioners' main grievance was that their selection on merit by interview, had been ignored. Candidates who should have been sent on deputation as per the norms laid down by the Lt. Governor, were not sent.

17. Be that as it may, the respondents have failed to fully abide by the random selection by number criteria as directed by the Lt. Governor. For this lapse,

respondent DDA is burdened with costs of Rs. 15, 000/- out of which Rs. 500/- each to be paid to the 17 petitioners and Rs. 6, 500/- to the Delhi Legal Services Authority. Writ petition stands disposed in the above terms.

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