

Ashok Kumar and anr. Vs. Mcd and ors.

Ashok Kumar and anr. Vs. Mcd and ors.

SooperKanoon Citation : sooperkanoon.com/910066

Court : Delhi

Decided On : Feb-04-2011

Judge : Anil Kumar ; Veena Birbal, Jj.

Acts : Administrative Tribunal Act, 1985 - Section 19; [Constitution of India](#) - Article 226

Appeal No. : W.P.(C) No.8246/2010

Appellant : Ashok Kumar and anr.

Respondent : Mcd and ors.

Advocate for Def. : Mr.Mukesh Gupta And Ors.

Advocate for Pet/Ap. : Mr.Rajeev Sharma, Adv.

Judgement :

1. Whether reporters of Local papers may YES be allowed to see the judgment?
2. To be referred to the reporter or not? NO
3. Whether the judgment should be NO reported in the Digest?

1. The petitioners have challenged the order dated 20th August, 2010 passed by the Central Administrative Tribunal Principal Bench, New Delhi in an application under Section 19 of the Administrative Tribunal Act, 1985 titled Sh. Ashok Kumar and Anr. vs. Municipal Corporation of Delhi & Ors. dismissing their application

seeking change of their seniority viz-a-viz other respondents.

2. Brief facts to comprehend the dispute between the parties are that for the post of Assistant Engineer (Civil) a test was conducted by Delhi Subordinate Staff Selection Board (hereinafter referred to as "DSSSB"). The petitioners and others were selected for appointment to the post of Assistant Engineer (Civil). Subsequent to the selection DSSSB had sponsored the petitioners to the MCD for appointment to the post of Assistant Engineer (Civil) along with others.

3. After selection the DSSSB had to make sponsoring, however, sponsoring was done in piecemeal for the posts. A combined merit list of all the candidates who had been selected was not sent to the MCD while sponsoring the names of the candidates.

4. On the basis of names sponsored by the DSSSB though all the names were not sponsored, the respondent No.1 Municipal Corporation of Delhi had to prepare a seniority list. Therefore a seniority list dated 31st October, 2007 of all the Assistant Engineers (Civil) whose names had been received was prepared. In the seniority list dated 31st October, 2007 it was categorically specified that the seniority was tentative and was subject to receipt of the select panel/merit list from the selecting agency, that is, DSSSB.

5. Later on by letter dated 4th December, 2008 the respondent No.1 received a merit list/select panel from DSSSB which led to revision and redrawing of the select panel/merit list which was finalized by the respondent No.1 and was circulated by circular dated 30th July, 2010. While finalizing the select panel/merit list the relevant OMs of the Government of India including O.M dated 3rd July, 1986 of DOPT were followed with.

6. In the final seniority list the names of respondent No.7 to 14 were placed above the petitioners, as their names also appeared above the petitioners in the merit list/select panel which was received from DSSSB. The petitioners, however, challenged the seniority list dated 30th July, 2010 alleging inter-alia that they were offered letter of appointment dated 18th January, 2005 and they had joined in 2005 itself. According to the petitioners the respondent No.1 had issued

appointment letter to them on the recommendation of DSSSB letter dated 14th October, 2004. It was also pointed out by the petitioners that the selection test which was conducted by DSSSB was challenged in respect of two posts of general category in the High Court and the appointment based on such test was stayed by the High Court in writ petition being W.P(C) No.5178/2003 along with CM No.11316/2005. By order dated 23rd September, 2005, the High Court was pleased to direct the respondent No.1 to keep two posts of Assistant Engineer (Civil) in general category out of the four available vacant posts and had permitted the remaining candidates to join the other 15 available posts in order of their merit. Petitioners contended that in the select panel of 2004 their names were at serial Numbers 6 & 8 respectively. After joining as Assistant Engineer (Civil) they were confirmed on completing the probation period vide office order dated 22nd April, 2008. A seniority list was declared in 2007 where all the Assistant Engineers (Civil) appointed up to 3rd August, 2007 were included and the name of the petitioner No.1 was at seniority No.501 and petitioner No.2 was at 503. The petitioners made a grievance that thereafter another final seniority list dated 19th February, 2010 was issued in which certain officers who were not in the seniority list dated 31st October, 2007 have been shown senior to the petitioners. From this the petitioners inferred that certain officers who had actually joined subsequently in 2007 have been shown senior to the petitioners.

7. According to the petitioners, knowing the usual practice that the objections invited at the time of finalizing the provisional seniority list are generally not noticed and considered and the final list is issued, they directly filed an original application being OA No.1079/2010 before the Tribunal which was considered without issuing notice to respondent No.1 and direction was given to treat the application of the petitioners before the Tribunal as supplementary representation and decide the same by passing a reasoned and speaking order.

8. Consequent to the order of the Tribunal the representations of the petitioners were considered and rejected. According to the petitioners while rejecting their representations the respondent No.1 ignored the order of the High Court and also did not implement the DOPT O.M dated 3rd July, 1986. The petitioners contended that the respondents who have been placed above them had deficiencies and,

therefore, their appointments were delayed and so if their appointments were delayed they could not be placed over them. The petitioners, therefore, challenged the circular of the respondent No.1 dated 30th July, 2010 categorically stipulating that DSSSB had sent panel of successful candidates in piecemeal and in accordance to their merit list which resulted into placing certain candidates who were below in merit list but whose dossiers were sent by the DSSSB prior to the candidates having higher merit position. Consequently they were placed over the candidates whose merits were higher but whose dossiers had not been received.

9. The application was opposed contending inter alia that later on after the complete dossiers and all the details were received the final seniority list was drawn. While drawing the final seniority list the OM dated 3rd March, 2008 and OM dated 3rd July, 1986 of DOPT were taken into consideration stipulating that merit rule would be bypassed only if the candidates do not join the service within the stipulated time of six months of issuance of appointment letter. However, the DSSSB had sent the panel of successful candidates in the piecemeal and not in accordance to their merit position because of pendency of Court cases etc and, therefore, there was no delay/fault on the part of candidates and consequently on the grounds as alleged by the petitioners they could not challenge the final seniority list drawn by the respondent No.1.

10. The Tribunal has noted these facts and dismissed the original application by order dated 20th August, 2010 relying on *Balwant Singh Narwal & Ors v. State of Haryana & Ors*, 2008 7 SCC 728 holding that candidates who were selected against earlier vacancies but who could not be appointed along with others of the same batch due to certain technical difficulties and not on account of any fault attributable to the candidates, when appointed subsequently, will have to be placed above those who were appointed earlier.

11. We have heard the learned counsel for the parties in detail. Before us also the petitioners counsel has raised the same grounds which have been repelled by the Tribunal. The learned counsel for the petitioners insisted that some of the respondents were appointed after the petitioners have been appointed in 2005. The learned counsel, however, was unable to show the reason for late

appointment attributable to the candidates who were higher in merit list than that of petitioners. The learned counsel has not been able to repel the plea of the counsel for the respondent No.1 that the seniority list of 31st October, 2007 was tentative and subject to receipt of select panel/merit list from the selecting agency, that is, DSSSB. In the facts and circumstances, it cannot be disputed that in the merit list/select panel sent by DSSSB the respondent Nos.7 to 14 appear above the petitioners. They could not be appointed on account of their dossier not sent in time and before the petitioners though they were lower than that of petitioners. Consequently placing the respondent nos. 7 to 14 above the petitioners in accordance with the merit list/select list cannot be faulted by the petitioners. The learned counsel for the petitioners have not been able to refute that no fault can be attributed to respondent Nos.7 to 14 whose dossiers were sent later resulting into delayed appointment in joining the substantive post, however they had joined before the expiry of time limit of panel. If there was a delay in the appointment of respondent nos. 7 to 14 which is not attributable to the them but on account of delay in receiving their complete dossiers by the concerned authorities, they cannot be made juniors to the petitioners. The plea of the petitioners is based on the tentative seniority list issued by the respondent no.1 in 2007. Tentative seniority list issued by the respondent no.1 was not a final seniority list and it cannot be held that the seniority list of 2007 could not be corrected or the name of those who were higher in the merit list/select panel of the DSSSB could not be placed above petitioners.

12. Reliance can be placed on *Balwant Singh Narwal & Ors v. State of Haryana & Ors*, 2008 7 SCC 728 in which Supreme Court was concerned with the case where an advertisement for the 18 post was issued by Haryana Public Service Commission which were subsequently increased to 37. The Commission declared the merit list of 30 selected candidates on 30-9-1993 (published on 1-10-1993), which included Respondents 4 to 16 in that case. However, before the State Government could make appointment in terms of the said list, a non- selected candidate filed WP No. 12700 of 1993 contending that only 18 posts were notified and the Commission could not make recommendations for selection of 30 candidates. The said writ petition was allowed by a learned Single Judge of the Punjab and Haryana High Court and the recommendations in excess of the 18

vacancies were quashed on the ground that the Commission could not make recommendations beyond the number of posts advertised. A Division Bench dismissed the appeal against the judgment of the learned Single Judge. The State Government appointed only 16 as against 18 permitted by the High Court, not for want of vacancies but on account of some technical difficulty in appointing the other candidates. The candidates who had been selected and who were denied appointments, though their names were in the selected merit list of 30 candidates, challenged the order. The Supreme Court reversed the judgment of the High Court and set aside the judgment of the Single Judge and held that the recommendation made by the commission were in accordance with law and all the 30 names recommended were entitled for appointment. Consequent thereto State Government appointed other candidates also. In dispute about the seniority, the said respondents pointed out that but for the litigation they would have been appointed along with others who had been selected and in the circumstances they should be given seniority above those who were appointed against subsequent vacancies. The State Government considered the plea of these persons but did not agreed to their request. Aggrieved by the decision of the State Government the earlier appointees filed a writ petition contending that the selection by commission was merely recommendatory and does not imply automatic employment and thus they cannot claim seniority. High Court rejected the writ petition which was challenged in the Supreme Court which upheld the decision of the High Court relying on *Surendra Narain Singh v. State of Bihar* (1998) 5 SCC 246 holding that candidates who were selected against earlier vacancies but who could not be appointed along with others of the same batch due to certain technical difficulties, when appointed subsequently, will have to be placed above those who were appointed earlier of the same batch. In *Surendra Narain Singh* (supra) it was held by the Supreme Court that when appointment is delayed, the candidates can not be allowed to suffer for no fault of theirs and their seniority would be protected. Similarly the respondent nos. 7 to 14 who were selected with petitioners who were appointed because their dossiers were sent by the DSSSB but the respondent nos. 7 to 14 could not be appointed on account of their dossiers not sent by the DSSSB, would be entitled for seniority over those who were lower in merit list/select panel of the DSSSB but could not be appointed on account of lapses on

the part of respondent nos. 1 to 6 nor the petitioners can claim seniority on the basis of tentative seniority list issued by respondent no.1 in 2007.

13. No other grounds have been raised by the petitioners. In the circumstances, the learned counsel for the petitioners has failed to make out any such illegality or un sustainability in the order of the Tribunal which will impel us to interfere with the matter in exercise of our jurisdiction under Article 226 of the [Constitution of India](#).

14. The writ petition in the facts and circumstances is without any merit and it is, therefore, dismissed. Parties are, however, left to bear their own cost.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com