

Mahender Singh and Others Vs. Mcd and Others

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Court : Central Administrative Tribunal CAT Delhi

Decided On : Feb-28-2012

Judge : The Honourable Mrs. Meera Chhibber, Member (J) & the Honourable Dr. a.K. Mishra, Member (a)

Appeal No. : O.A. Nos.2117 of 2010, 1997 of 2010 & M.A. Nos. 1696 of 2010, 1601 of 2010

Appellant : Mahender Singh and Others

Respondent : Mcd and Others

Advocate for Pet/Ap. : For the Applicants: Ajesh Luthra, Advocate. For the Respondents: K.M. Singh, R.K. Jain, Advocates.

Judgement :

MRS. MEERA CHHIBBER, MEMBER (J)

1. Both these OAs are being filed by the same advocate and the facts and relief claimed are also same, therefore, with the consent of all the counsel, both these matters were heard together, therefore, they are being disposed of by a common judgment. For the sake of narrating facts, OA No.1997/2010 is being taken as a lead case.

2. There are 36 applicants in OA No.1997/2010 while 6 in OA No. 2117. The relief claimed in both the cases are as follows:-

“(a) quash the impugned orders along with impugned SCN and circular with consequential benefits.

(b) award costs of the proceedings and

(c) pass any order/direction which this Hon’ble Tribunal deem fit and proper in favour of the applicant and against the respondents in the facts and circumstances of the case.”

3. The brief facts, as alleged by the applicants, are that they were appointed as Surveillance Worker on regular basis by way of direct recruitment on 23.5.1978 after there was a malaria epidemic in Delhi in order to take effective steps in its control (page 67). The offer of appointment shows that terms used were also as are used at the time of regular appointment (page 101). Vide order dated 13.5.2003 two financial upgradations were granted to all the applicants, who were later on designated as Anti Malaria Inspector (hereinafter referred to as AMI). The benefits thereof were also given to all the applicants and they enjoyed the same. All of a sudden, show cause notice dated 9.8.2005 was given to the applicants (page 59) calling upon them to explain as to why second financial upgradation under ACP Scheme vide order dated 13.5.2003 should not be withdrawn with retrospective effect. All the applicants gave their reply stating therein clearly that they were appointed as Surveillance Worker on direct recruitment basis. The respondents were satisfied with the reply given by the applicants, therefore, no action was taken on the show cause notice thereafter. After a period of over 4 years vide letter dated 24.12.2009 all the DHOs of the Zone were directed to call all the 57 officials (AMIs) to give an affidavit about their status as AMI whether they were departmentally promotees or direct appointees. They were further directed to submit supporting documents, i.e., SI/MI Diploma from recognized Board/Institution and Matric pass certificate on or before 1978. All the applicants filed their affidavit stating therein that they were directly appointed as Surveillance Worker (page 81).

4. Applicants are aggrieved by order dated 11.6.2010 (page 54) whereby the Deputy MHO (Mal and OVBD) had written to all the DHOs and other Heads stating therein that all the 57 AMIs mentioned in Office Order dated 9.8.2005 will

henceforth be considered as promoted to the post of AMI and their earlier stand as appointed to the post of AMI stands annulled. It was further mentioned in this letter that they cannot claim ACP after 12 years from the date of promotion as AMI. They are entitled for second ACP after 24 years of service as they have already got one promotion subject to their qualifying for promotion to the next higher post, i.e., Malaria Inspector as per notified RRs. It was further mentioned that if all these 57 AMIs have received any financial benefit under ACP Scheme, process for recovery should be initiated as Hon'ble Mr. Shanker Raju has categorically stated it has financial loss which needs to be addressed.

5. It is submitted by the counsel for the applicants that after a period of over 32 years, status of applicants cannot be changed from direct appointee to promotee. The letter of appointment clearly shows that they were appointed as direct recruits. Had it been promotion, it could not have been mentioned in the letter that their services would be terminated if not found suitable. Moreover, as per the RRs, the only feeder category for promotion was from categories of Anti Malaria/DDT/Beldars and Jamadars with one year's experience in the case of matriculates whereas the applicants were initially appointed as Seasonal Malaria Beldar, which is not even included in the feeder category, therefore, they cannot be termed as having been promoted as AMI. Counsel for the applicants thus submitted that since applicants were directly appointed as Surveillance Worker later notified as AMI, it is wrong to treat them as promotee AMIs and deny them the financial benefits which had been granted to them in the year 2003. They have thus prayed that the OAs may be allowed.

6. Respondents have opposed this OA. They have stated that as per records applicants had joined as Surveillance Worker presently known as AMI on 23.5.1978 as direct recruits but the concerned record is not available in AMO Headquarter as the matter is 32 years old. The fact remains that they did not have the requisite educational qualification, i.e., Matric with SI Diploma on 23.5.1978. They fulfilled the criteria for promotion to the post of Surveillance Worker as per the then notified RRs of 1976, therefore, order dated 11.6.2010 was issued after giving them full opportunity to show their educational qualification as required under the RRs. Since applicants failed to produce the relevant documents as on

23.5.1978 and on examination it was found that all the 57 Surveillance Workers were not eligible for direct appointment on 23.5.1978 but they were eligible for departmental promotion from the post of FW/MB to the post of Surveillance Worker, they were deemed to have been promoted because all of them were working as FW/MB before 23.5.1978. They have further submitted that in the case of Krishan Pal and Others Vs. MCD the respondents had taken the same stand as in the present case because he (Krishan Pal) also did not fulfill the bench mark of educational qualification, therefore, he could not be promoted to the next higher post of Malaria Inspector. The applicant therein alleged he is being discriminated and an objection was taken by the counsel for the applicants in that case that all the 57 AMIs who were placed similar to him as per educational qualification had been given benefit of first and second financial upgradation after 12 and 24 years of service, therefore, the same benefit should be given to him as well. He had also stated that though show cause notice was given to all the 57 Surveillance Workers but no action was taken thereon. After hearing both the parties, Hon'ble Mr. Shanker Raju gave judgment dated 11.12.2009 directing the MCD to examine the case of 57 Surveillance Workers to avoid municipal loss.

7. It was pursuant to the said judgment that show cause notice was given to all the 57 candidates but nobody could produce educational qualification, i.e., Matric with SI Diploma prior to 23.5.1978. It was thus evident that all the 57 AMIs could not have been appointed as a direct recruit. They were thus treated as having been promoted from the post of FW/MB to the post of Surveillance Worker. The recoveries with regard to benefits of ACP were to be taken urgently as directions were given by the Tribunal. They have further stated that Shri Krishan Pal had filed Writ Petition No.1223/2010 before the Hon'ble High Court of Delhi against the judgment of Hon'ble Shri Shanker Rau and even the Hon'ble High Court had observed that petitioners have not been able to establish that they were appointed to the post of Assistant Malaria Inspectors as they did not have the requisite qualification as contemplated under the Recruitment Rules and consequently, the inevitable inference is that they were promoted from the post of Seasonal Malaria Beldar to the post of Assistant Malaria Inspector. Thus on account of getting one promotion in 1977-78, they are only entitled for one benefit under the ACP Scheme and not to the other benefits, cannot be faulted.

8. Counsel for the respondents thus submitted that the issue has already been decided by the Hon'ble High Court of Delhi, therefore, the present OA may be dismissed.

9. In rejoinder, applicants have stated that there were no notified RRs of the year 1976. Prior to 1978, applicants had worked with the MCD on seasonal/causal basis and did not hold any post on regular basis. They have thus prayed that the relief, as prayed for, may be granted.

10. We have heard all the counsel and perused the pleadings also.

11. From perusal of judgment dated 11.12.2009 in the case of Krishan Pal and Others Vs. MCD and Others, it is seen that the applicants therein were also initially appointed as Surveillance Workers/Assistant Malaria Inspectors during the period 1977-78 by way of direct appointment. They were granted the benefit of 1st financial upgradation. Their grievance was that they were granted only first ACP in the scale of Rs.4000-6000 while the other AMIs who were similarly appointed, were given the benefit of two ACPs i.e. first in the pay scale of Rs.4000-6000 and second in the scale of Rs.4500-7000. They had alleged discrimination and arbitrariness on the part of the respondents. Since no response was given to their representations, they had filed Writ Petitions (Civil) No.3936-38 of 2006 before the Hon'ble High Court of Delhi, which was renumbered as TA No.903/2009 on having been transferred to the Central Administrative Tribunal. It is also relevant to note that in the said judgment in para 5.1, it is clearly mentioned that all the applicants therein had initially been engaged as seasonal workers/daily wagers since the year 1973, 1976 and 1978. They were appointed as Surveillance Workers during the years 1977-78. Thereafter the Tribunal had referred to the RRs for the posts of Surveillance Worker/AMI, according to which educational qualifications for direct recruits were as follows:-

“(1) Matric preferably with science subject

(2) Sanitary Inspectors Diploma or Malaria Inspectors Course”

and method of recruitment was as follows:-

“(i) 50% by direct appointment

(ii) 50% by promotion from categories of Anti Malaria/DDT Beldars and Jamadars with 1 year experience in the case of Matriculates and 10 years Experience in the case of Middle.

1. Anti Malaria/Anti Larval Beldars.
2. Anti Malaria/Anti Larval Jamaders.
3. DDT Jamadars (Superior) Field Workers.
4. DDT Beldars (Field Workers)”.

In that case also the defence of the respondents was that the applicants therein did not have the requisite Sanitary Diploma or Malaria Inspectors Course. Conceding to the contention of the respondents it was held by the Tribunal that the appointment of the applicants as Surveillance Workers were against the 50% promotion quota in para 6 thereof. While dealing with the contention of discrimination, Tribunal had noted that respondents had issued order dated 9.8.2005 giving benefit to all the 57 AMIs who had been granted two financial upgradations but after recording the statement made by the counsel for the respondents at bar, that requisite action as per law against all those persons (who had wrongly been granted benefits of double financial upgradation) would be taken, the TA was dismissed.

12. From above, it is clear that the applicants therein had also been initially engaged as Seasonal Workers/Daily Wagers like the applicants herein who were engaged as Seasonal Malaria Beldar, therefore, both the set of applicants were working as seasonal workers and were not regular employees of the MCD. It is also relevant to note that they were claiming the second financial upgradation on the basis of benefits given to the applicants who were included in the list of 57 AMIs, who had been given show cause notice dated 9.8.2005 calling upon them to explain as to why the same should not be withdrawn as they did not fulfill the educational qualification for direct recruitment.

13. It is further relevant to note that the matter was carried to the Hon'ble High Court of Delhi by filing Writ Petition No. 1223/2010. It is relevant to note that the Hon'ble High Court of Delhi in its judgment dated 5.5.2010 observed as follows:-

“The learned counsel for the petitioner has not been able to deny that all the petitioners did not have the requisite qualification of Sanitary Inspector Diploma or Malaria Inspector Course. If the petitioners did not possess the requisite Sanitary Inspector Diploma or Malaria Inspector Course, they could not be appointed to the post of Assistant Malaria Inspector directly.

The learned counsel for the petitioner could not justify that though they did not have the requisite qualification for appointment as Assistant Malaria Inspector, however they were appointed on account of alleged concession granted at that time. The learned counsel, however, is unable to show any such order or any order granting such relaxation for appointment as Assistant Malaria Inspector despite not having pre- requisite qualification in case of petitioners or to any other persons”.

It was further observed as follows:-

“The plea of the petitioners is rather that they were given ad hoc appointment as Assistant Malaria Inspector and they have continued to work as such. In the circumstances, the petitioners cannot be permitted to contend that though they did not possess the requisite qualification in accordance with the Recruitment Rules, however, they were appointed as Assistant Malaria Inspector directly on account of relaxation from the requisite qualification granted by MCD to them. In the circumstances the plea of the respondent that the petitioners were promoted to the post of Assistant Malaria Inspector has to be accepted and the finding of the Tribunal in this regard cannot be faulted.

The learned counsel for the petitioner has also relied on a show cause notice dated 9th August, 2005 stipulating that the petitioners were promoted from the post of Seasonal Malaria Beldar and since the petitioner did not fulfill the eligibility for direct recruitment for the post of Assistant Malaria Inspectors applicable at that time as per Recruitment Rules for the said post and as the candidates for the post

of Assistant Malaria Inspector were required to possess Sanitary Inspector Diploma and since the petitioners were promoted, therefore, why the 2nd financial upgradation granted under the ACP Scheme may not be withdrawn with retrospective effect.

The said show cause notice was not restricted to the petitioners only but was given to number of employees on the premise that the second upgradation under the scheme had already been granted to the petitioner and other persons. This is not disputed that the 2nd financial upgradation had not been granted to the petitioners. Therefore, on the basis of the show cause notice dated 9th August, 2005, they cannot contend that they were appointed as direct recruit to the post of Assistant Malaria Inspector and they were not promoted from the post of Seasonal Malaria Beldar.

In the totality of the facts and circumstances, the petitioners have not been able to establish that they were appointed directly to the post of Assistant Malaria Inspector as they did not have requisite qualification as contemplated under the Recruitment Rules and consequently, the inevitable inference that they were promoted from the post of Seasonal Malaria Beldar to the post of Assistant Malaria Inspector and on account of getting one promotion in 1977-78, they are only entitled for one benefit under the ACP Scheme and not to the other benefits, cannot be faulted”.

14. Perusal of above judgment clarifies that the facts and circumstances of the said case was absolutely same as in the present case before us. Hon'ble High Court of Delhi had clearly given a finding that since the applicants therein did not possess the educational qualification as per the RRs in vogue at that time the inevitable inference was that they were promoted from the post of Seasonal Malaria Beldar to the post of Assistant Malaria Inspector and since they had got one promotion in year 1977-78, they are only entitled to one benefit under the ACP Scheme and not the other. Exactly the same position exists in the present case also. In the present case also it is admitted by the applicants that they were not having the requisite educational qualification on the date when they were appointed as SW/AMI. It is correct that the order of appointment contain the terms

which are generally given for regular appointment but in the said order it was specially mentioned that the appointment is on ad hoc basis. It could be so because they did not have the educational qualification as required by the RRs, therefore, it cannot be stated that the applicants were appointed on regular basis by way of direct appointment in 1978 otherwise the word ad hoc would not have been used in the appointment letter (page 101). In any case since Hon'ble High Court has already concluded that in the absence of having requisite qualification at the time of appointment, the inevitable inference that be drawn is that applicants were promoted from the post of Seasonal Malaria Beldar to the post of Assistant Malaria Inspector, the present case is fully covered by the above judgment of the Hon'ble High Court of Delhi.

15. Counsel for the applicants had submitted that the RRs were not notified. Since there were no notified RRs, the RRs which were passed by way of Resolution would hold the field. Counsel for the applicants has not been able to produce any other RRs for the post of SW/AMI, therefore, this contention is rejected being without any merit.

16. In view of above, the relief, as claimed by the applicants, cannot be granted. Both the OAs are accordingly dismissed. No order as to costs.

Let a copy of this order be placed in both the files.

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