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Court : Central Administrative Tribunal CAT Delhi

Decided On : Mar-07-2012

Judge : V.K. Bali, Chairman & the Honourable Dr. (Mrs.) Veena Chhotray, Member (a)

Appeal No. : Original Application No.2715 of 2011 & Contempt Petition No.833 of 2011

Appellant : N.C. Jedia

Respondent : Delhi Development Authority Through Its Chairman, Vikas Sadan, Ina, New Delhi

Advocate for Pet/Ap. : For the Applicant: R.A. Sharma, Advocate. For the Respondent: Arun Birbal, Advocate.

Judgement :

V.K. BALI, CHAIRMAN:

1. We have already referred to the salient features of the case while issuing notice on 03.08.2011, and vide another order dated 02.01.2012. Since the basic facts of the case and the controversy involved in the matter have already been mentioned, we could well say that the present order be read in continuation of the orders aforesaid, but as that may cause some inconvenience to those who might like to

read the judgment, we will bodily lift both the orders and reproduce them. The same read, thus:

Order dated 03.08.2011

“The applicant joined Delhi Development Authority (DDA) on 30.10.1988 as a direct recruit Assistant Engineer (Electrical). He was promoted to the post of Executive Engineer (Electrical) on 5.11.1999 and to the post of Superintending Engineer (Electrical) on 8.7.2008. The order of his promotion to the post of Superintending Engineer (Electrical) has been withdrawn vide impugned order dated 20.7.2011. This is the order in question in the present Original Application filed by him under Section 19 of the Administrative Tribunals Act, 1985.

2. The case history as given in the pleadings of the OA and the accompanying documents would reveal that some Junior Engineers employed with the respondent-DDA filed a writ petition in the High Court of Delhi stating that there were 25 posts of Assistant Engineers (Electrical) lying vacant in the year 1983 which were required to be filled by way of promotion from amongst Junior Engineers (Electrical) from the category of degree holders and diploma holders, for which minimum eligibility was three years and eight years, respectively. A meeting of the Departmental Promotion Committee (DPC) was held in 1983 which considered the promotion of the petitioners. The petitioners, at that time, were admittedly short of prescribed period of eligibility service by few months. They were, however, permitted to officiate as AE (Electrical) on current duty charge basis. Thereafter, the DPC held two meetings on 29.3.1989 and 31.3.1989, by which time all the petitioners had the requisite number of years of minimum service required for being considered for promotion as AE (Electrical). However, vide order dated 7.4.1989, the respondent DDA promoted certain other persons as AE (Electrical) but left out the appellants altogether from the said list. In the facts as mentioned above, they prayed for their promotion from 7.4.1989. The writ was dismissed, but the Letters Patent Bench in the appeal preferred by them directed the respondent-DDA vide order dated 7.9.2006 to follow the procedure as envisaged vide office memorandum dated 24.12.1980 and re-work the select list not later than eight weeks from the date of the order. Such of the appellants who

would get their promotion as AE (Electrical) with effect from 7.4.1989 as a result of re-worked select list, were to be given consequential benefits to which they may be entitled to, within six weeks thereafter. Vide orders dated 1.2.2008 some clarifications were issued by the Letters Patent Bench.

3. It is pursuant to the directions issued by the Hon'ble Letters Patent Bench that the impugned order dated 20.7.2011 has been passed. It appears that in the revised seniority list of Assistant Engineers (Electrical) finalized vide circular dated 18.3.2010, the name of the applicant stands at serial number 94 and his seniors are still working as Executive Engineer (Electrical). By observing in the impugned order that seniors of the applicant are still working on the post of Executive Engineer (Electrical), promotion of the applicant to the post of Superintending Engineer (Electrical) has been withdrawn.

4. During the course of arguments it could not be disputed that some seniors of the applicant are indeed working on the lower post, i.e., Executive Engineer (Elect.), whereas the applicant is working on the post of Superintending Engineer (Elect.). Ms. Jyoti Singh, learned counsel representing the applicant, would, however, vehemently contend that even though, seniority might have been worked out, but till date no review DPC has been held for promotion to the post of either Executive Engineer (Elect.) or Superintending Engineer (Elect.), and till such time this exercise is to be gone into and those who are senior to the applicant as per revised seniority list are found fit for promotion in preference to the applicant, the order of reversion or withdrawing the promotion of the applicant could not be passed.

5. The matter would need consideration. The question that would arise for determination in the present case is as to whether irrespective of the seniority of the applicant vis--vis those who may be working on the lower post of Executive Engineer (Elect.), the promotions have to be made on the post of Executive Engineer (Elect.) and then as Superintending Engineer (Elect.) by review DPC, and if so, when the applicant may have a chance to supersede seniors, can an order of reversion or withdrawing promotion of the applicant be passed at this stage.

6. Issue notice to the respondents returnable on 13.09.2011. Copy of this order be sent to the respondents along with the notice.”

Order dated 02.01.2012

“Arguments in this case were heard on 21.12.2011 when judgment was reserved. While issuing notice in this case on 03.08.2011, we passed a speaking order. This order be read in continuation of the said order, as the limited controversy in the present case would be well made out from the same. While preparing the judgment, we found the pleadings made in the counter reply to be somewhat confusing. The impugned order, as mentioned in the earlier order, came to be passed pursuant to directions given by the High Court in a letters patent appeal. The writ petitioners before the High Court were employed as Junior Engineers (JEs) with DDA. The next higher promotional post in the hierarchy for the post of JE is that of Assistant Engineer (AE). The DPC for promotion to the post of AE held two meetings on 29.03.1989 and 31.03.1989. By an order dated 07.04.1989, some persons other than the petitioners before the High Court were promoted as AE (Electrical). Constrained thus, a writ was filed calling in question the order dated 07.04.1989. During pendency of the writ petition, the applicants were promoted as AEs in December, 1990, and, therefore, their surviving grievance was that had they been promoted as per year-wise vacancies, they would have counted their seniority and would have been entitled to other consequential benefits from earlier dates. For holding DPCs every year, reliance was placed upon office memorandum dated 24.12.1980. Para (ii) of the memorandum aforesaid reads as follows:

“(ii) Consider in respect of each of the year those officers only who would be within the field of choice with reference to the vacancies of each starting with the earliest year onwards.”

Inasmuch as, the procedure envisaged in para (ii) of the office memorandum aforesaid was not followed, the impugned order dated 07.04.1989 was set at naught. Following directions came to be issued by the Hon’ble Division Bench of the High Court in its order dated 07.09.2006:

“The respondent DDA is now directed to follow the procedure as envisaged by the Office Memorandum dated 24.12.1980 and re-work the select list not later than eight weeks from today, i.e., not later than 2.11.2006. Such of those appellants who would get their promotion as AE (Electrical) with effect from 7.4.1989 as a result of the re-worked select list, will also be given the consequential benefits to which they are entitled, within six weeks thereafter i.e., not later than 14.12.2006.”

A correction came to be made in the order aforesaid, vide order dated 01.02.2008. The relevant and operative part of the order passed in the application seeking clarification of the impugned order, reads as follows:

“In our view, this is not consistent with the mandate of the judgment as contained in paragraph 6. Our judgment itself notes that the main grievance of the petitioners was about the failure of the DDA to hold year-wise DPCs from 1984 onwards. That was done only after our judgment. In para 6 we had directed that the petitioners who would get their promotion with effect from 7th April, 1989 will also be given the consequential benefits to which they are entitled. By no means did we intend that if the petitioners were otherwise eligible to be promoted from an earlier date, they should not be so promoted. The petitioners cannot be denied promotion from 9th February, 1984, if they are otherwise entitled to it from that date, only because the DDA did not hold a DPC at the right time. The OM dated 24th December, 1980 also envisages that DPCs will be held on time. This clarification should now enable the DDA to take corrective action without delay. We accordingly direct the respondent/DDA to issue the necessary corrective orders not later than 28th February.”

In the exercise that was to be done by DDA pursuant to orders referred to above passed by the High Court, as urged by Ms. Jyoti Singh, the learned Sr. Advocate representing the applicant, it was to work out the seniority as ordained, which indeed, it appears, has been done, and then to consider eligible JEs for their promotion to the post of AE, which could be done by holding year-wise DPCs. For further promotion to the posts of Executive Engineer (EE) and Superintending Engineer (SE), there had to be separate DPCs. The direction given by the High Court could not result into automatic promotion, either of the petitioners before the

High Court or anyone else similarly situate, simply by working out seniority on the post of JE/AE, as the case may be. The applicant meanwhile had not only been promoted to the post of EE but SE as well. His reversion, it has been the plea of the learned counsel representing the applicant, could not be brought about till such time eligible officers were first considered for their promotion to the post of EE by a duly constituted DPC, and thereafter to the post of SE, once again, by constituting a proper DPC for that purpose. It is the case of the applicant that no DPCs have at all been held till date.

2. In the counter reply filed on behalf of the respondents, as mentioned at the very outset, we find some confusion. In para 6 of the preliminary submissions, it is inter alia pleaded that the DDA, as per year-wise vacancy position and final seniority list of 18.03.2010, held DPC for promotion of Shri Ram Chandar Ravi Das and Shri Ram Chandar to the post of Executive Engineer (Electrical) and finally vide E.O. No.910 dated 25.05.2010 promoted the aforesaid AEs to the post of EE w.e.f. 04.01.2008 and 01.01.2009 respectively, whereas Shri Tilak Singh at serial number 35/92 who was diploma holder and senior to the applicant, was promoted as EE (Electrical/Mechanical) on 18.10.2010. From the contents of para 6 it may appear that DPC for the post of EE was held, although during the course of arguments no such submission was made, and we have found out this only from para 6 of the counter reply while preparing the judgment. In para 8, however, it is pleaded that in no circumstances, the applicant would be considered for promotion to the post of SE in the absence of requisite qualification, and, therefore, there would be no requirement to hold review DPC. The facts are sacrosanct and must be truly stated. Surely, if there is confusion on facts, there is likelihood that the judgment may be wrong.

3. In totality of the facts and circumstances of the case, we direct the respondent DDA to file an additional affidavit through one of its responsible officer to clarify the position as follows:

Whether after working out seniority on the post of Assistant Engineers, DPCs were held for the posts of Executive Engineer and Superintending Engineer, and if so, when and with what result. If it be the case of the respondent DDA that DPCs were

indeed held, then in that case, minutes of the DPC need to be placed on records.

4. List again on 24.01.2012. Copy of this order be supplied to learned counsel for parties.”

2. Pursuant to directions given in the last order, the respondents have filed an additional affidavit. Even though, it is the case of the applicant that no DPC has been held even for the post of Executive Engineer, which plea we have recorded in our order dated 21.09.2011, but we will still go by the contents of the additional affidavit filed on behalf of the respondents. Order dated 21.09.2011 reads as follows:

“MA 2505/2011

This order be read in continuation of earlier order dated 03.08.2011 where questions involved in OA have been mentioned. After notice, when the matter came up for hearing on 13.9.2011, respondents sought time to file their reply. The matter now stands posted for hearing on 25.10.2011. Meanwhile, Misc. Application has been filed by applicant seeking stay of operation of the impugned order dated 20.07.2011.

It is the case of the applicant in the Miscellaneous Application that the impugned order contains wrong facts that DPC has been held for the post of Assistant Engineer. The applicant is stated to have made an application seeking supply of information/documents under Right to Information Act, which was replied by the respondents vide their letter dated 27.07.2011, the relevant part whereof reads as follows:-

“In this context, it is intimated the matter regarding finalization of the seniority of AE(E/M) is purely an administrative matter dealt with by the Personnel Branch-I. C.R. Cell deals with the promotion cases only. No such DPC for revising/reviewing the seniority list of AE(E/M)/EE(E/M) was ever held. Hence, providing the copies of agenda and minutes of DPC meeting does not arise.”

Issue notice to the respondents, returnable on 25.10.2011. In the meanwhile, status quo as regards applicant's present status shall be maintained. We clarify

that if applicant has not been relieved of the post from which he was reverted, he would be allowed to continue on the post.

Process DASTI.”

The contents of paras 1 to 9 of the additional affidavit reveal that the respondents have held DPC for promotion to the post of Executive Engineer from time to time mentioned therein. From the contents of para 10, it would be clear that there has been no DPC for the post of Superintending Engineer, and the plea raised by the respondents is that be it the applicant or his seniors, no one is, under rules, so far eligible to be promoted to the post of Superintending Engineer. It may be recalled that the impugned orders have been passed pursuant to the directions given by the Hon'ble High Court, already adverted to above. If the case of the respondents was to be that the applicant and his seniors were eligible, then in that case, there ought to have been DPC before the applicant could be reverted from the post of Superintending Engineer. The concerned DPC would naturally consider the service credentials of every one, and, as mentioned earlier, it would have been possible that some of the seniors of the applicant would not have been promoted as per their service credentials. Reversion of the applicant would have been dependent upon his service records and that of his seniors. However, this has not happened, and if that be so, reversion of the applicant cannot be, by any stretch of imagination, in consequence of the compliance of the directions given by the Hon'ble High Court, and, therefore, the impugned order would not record the reason for reversion of the applicant. Admittedly, there is no mention at all in the impugned order that the applicant has been reverted because he is not eligible for promotion to the post of Superintending Engineer. We would not like to go into this question as surely, if the reasons for his reversion are entirely different than the one mentioned in the impugned order, the same has to be set aside, and surely and admittedly, the applicant before the order of reversion against him came to be passed, was not heard in the matter. The applicant was promoted on the post of Superintending Engineer (Elec.) based on the recommendations of the duly constituted DPC, way back on 09.07.2008, as mentioned in para 1 of the Original Application. He had thus been occupying the post of Superintending Engineer for a long time before the order of reversion came to be passed. One could

understand if the order of reversion was to be pursuant to the directions of the Hon'ble High Court, and could be issued without putting the applicant to notice, even though he may not be a party in the proceedings before the High Court, but surely, if the reasons are entirely different, the principles of natural justice required that he is heard in the matter.

3. For the reasons, as mentioned above, this Original Application deserves to be allowed. The part of the impugned order dated 20.07.2011 withdrawing the promotion of the applicant is quashed and set aside, of course with liberty to, proceed against the applicant and revert him, if the circumstances may so warrant, after putting him to notice, hearing him and then passing a speaking order. If the applicant is not being allowed to do duty on the post of Superintending Engineer, as we are told during the course of hearing, he shall be allowed to do so immediately, till such time the order, if at all, withdrawing his promotion, following the proper procedure, is passed. There shall, however, be no order as to costs.

4. Contempt petition is closed.

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