

*** HIGH COURT OF DELHI: NEW DELHI**

**Judgment reserved on: August 12, 2009
Judgment delivered on: August 20, 2009**

+ W.P. (C) No. 659 of 2001

Sushil Kumar ... Petitioner
Through: Mr. R.P. Pandey, Advocate.

versus

N.C.T. of Delhi and others ... Respondent
Through: Nemo.

**CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR**

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

SUNIL GAUR, J.

1. Petitioner is a *Frash-cum-Chowkidar* with respondent-Delhi Scheduled Castes Financial & Development Corporation Ltd. (hereinafter referred to as the 'respondent-Corporation'), who was promoted to the post of Lower Divisional Clerk on *ad hoc* basis for a period of six months vide Order of 12th November, 1993 (Annexure-P-2).

2. Vide impugned order of 17th May, 1994 (Annexure- P-3), petitioner alongwith three other employees of the

respondent-Corporation stood reverted to their original posts. Petitioner claims to have made various Representations (Annexures- P-7, P-10 & P-11) during the period 1995-2000 against the impugned Order, but without any success. According to the petitioner, he ranks at serial No. 21 in the tentative seniority list as on 1st September, 1986. The grievance of the petitioner is that in the meanwhile, his juniors have been promoted vide Order of 6th December, 1996 (Annexure-P-5). According to the petitioner, a three member Committee of the respondent-Corporation had examined the Representations of petitioner and other employees and vide Report of 8th June, 1999 (Annexure- P-12), had declared that the Representations of the petitioner and two other employees were justified. The contention of the petitioner in this petition is that despite Report (Annexure- P-12) in favour of the petitioner, impugned order of reversion of the petitioner is not being nullified by the respondent-Corporation and the consequential benefits have not been extended to the petitioner. Thus, quashing of impugned order of reversion and the consequential benefits, are sought in this petition.

3. The stand taken by the respondent-Corporation in the counter affidavit is that petitioner's name was in the surplus staff of disbanded Engineering Wing and he could not be considered for promotion till the adjustment was made vide Order of 23rd July, 1997. It has been pointed out in the counter affidavit that Sukh Sagar, Lalit Mohan and Ram Avtar, who were junior to the petitioner were promoted because they had cleared the typing test prior to the petitioner, who despite Circular No. 227 of 12th September, 1996, had not conveyed his willingness to appear for the typing test and his juniors Mam Chand, Bed Pal, Kuldeep Singh, Dhan Bhadur and Mukesh Kumar, upon clearing the typing test were promoted to the post of LDC on *ad hoc* basis. As per the counter, petitioner was informed vide Memorandum No. F.1(55)/92/DSFDC/7588 of 24th April, 1996, that his request for promotion was considered and rejected by the Competent Authority as he was in the category of surplus staff of disbanded Engineering Wing of the respondent-Corporation.

4. The precise stand of the respondent-Corporation is that the question of promotion of the petitioner to the post of LDC does not arise till his final adjustment in the regular cadre.

Regarding the recommendation/ Report of the Committee (Annexure- P-12), it is stated that the Competent Authority has to still take a decision on it. However, it has been also stated in the counter filed by the respondent-Corporation that the Report of the Committee (Annexure- P-12) has not been accepted by the Competent Authority.

5. At the time of hearing of this petition, there was no appearance on behalf of the respondents. However, liberty was granted to both the sides to file their short written synopsis but such a course is not adopted by either side.

6. After having heard the counsel for petitioner and upon perusal of material on record, this Court finds that once the Representation of the petitioner has been found to be justified by the Committee constituted by the respondent-Corporation, then, the respondent-Corporation cannot take a contradictory stand in the counter affidavit filed by it regarding the Report (Annexure - P-12) of the Committee. One the one hand, respondent-Corporation is asserting in Para-12 of the counter affidavit that the Competent Authority has still to take any decision on it, whereas, in the next very paragraph, i.e. in Para-13 of the counter affidavit, it is stated by the respondent-Corporation that the Report of the

Committee is a confidential matter which has not been accepted by the Competent Authority. No reasons for not accepting the Report of the Committee (Annexure- P-12) are forthcoming. Apart from this, contesting respondent-Corporation is required to bring on record as to whether the final adjustment of the petitioner in the regular cadre has been made or not. Though, the stand of the respondent-Corporation in Para-8 of the counter affidavit is that the petitioner, despite Circular of September, 1986, did not convey his willingness to appear for the typing test but in the rejoinder petitioner has asserted that he had qualified the typing test in July, 1993, and his juniors, as referred to in Para-8 of the writ petition, had qualified the typing test in the year 1996.

7. There cannot be an effective decision on merits in the writ petition, when the facts are in dispute or are not clearly brought on record. Since the contesting respondent-Corporation has taken contradictory stand regarding the Report of the Committee (Annexure- P-12), therefore, there cannot be an effective decision on merits at this stage. If the Competent Authority has to still take a decision on the Report of the Committee (Annexure- P-12), then it needs to

be explained as to why there is such an inordinate delay in doing so. Non acceptance of the Report of the Committee (Annexure- P-12) by the Competent Authority has to be for good reasons. To say the least, no reasons for not accepting the Report of the Committee, are forthcoming in the counter affidavit filed by the respondent-Corporation. What was least expected from the respondent-Corporation was that it ought to have placed on record the Order of the Competent Authority declining to accept the Report of the Committee (Annexure- P-12). Respondent-Corporation has failed to do so, without any valid reason.

8. This Court is constrained to observe that the response of the respondent-Corporation to this petition is not only contradictory but dilatory one. This Court would certainly like to know the reasons as to why the Report of the Committee (Annexure- P-12) has not been accepted by the Competent Authority. Since the respondent-Corporation is compelling the petitioner to another round of litigation, therefore, it has to be put to terms.

9. In the peculiar facts and circumstances of this case, it would be in fitness of things to call upon the petitioner to make a comprehensive Representation against the

impugned Order (Annexure-P-3) to the respondent-Corporation in view of the counter filed by it and for this purpose, petitioner is granted four weeks time. Once the contesting respondent is seized of petitioner's Representation, it is directed that the Representation of the petitioner be decided by the respondent-Corporation by passing a speaking order in light of this order and while dealing with the Report of the Committee (Annexure- P-12) in an effective manner within twelve weeks from the date of receipt of petitioner's Representation. It will be incumbent upon the respondent-Corporation to communicate to the petitioner the fate of his Representation within two weeks of taking decision thereupon.

10. This petition is allowed to the extent indicated above, with cost of Rupees ten thousand only, to be borne by respondent No.2.

SUNIL GAUR, J.

August 20, 2009
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