

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P. (C.) No.1259/2006**

% **Date of Decision: 26.11.2009**

K.N. Sharma Petitioner
Through Petitioner in person.

Versus

Sports Authority of India and others Respondents
Through Mr. Anil Grover Advocate with Mr.
Manish Kumar Advocate for
Respondent no.1.
Mr. J.P.Sharma Advocate for
Respondent no.2
Ms.Shubhangi Tuli, Advocate for
respondent No.3.

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

HON'BLE MR. JUSTICE VIPIN SANGHI

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

ANIL KUMAR, J.

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1. The petitioner herein seeks quashing of the order dated 2nd March, 2005 passed in OA No.3192 of 2002 titled K.N. Sharma v. Sports Authority of India declining his claim of seniority in the grade of Director over respondent No.3; grant of financial relief and arrears from 1.8.1986 in the rank of Deputy Director and from 5th August, 1991 in the rank of Director, and declining to declare that the absorption of respondent no.3 in respondent no.1 was against the bye laws of

respondent no.1 and other statutory rules and also declining selection/promotion of the petitioner as Regional Director from 1995 and as Executive Director from 2001.

2. Brief facts to comprehend the disputes raised by the petitioner are that he joined as a Hockey Coach in Grade III in Netaji Subhash Institute of Patiala in December 1973. He was promoted as Hockey Coach Grade II on 1st April, 1980 in the pay scale of Rs.700-1100. Thereafter, he was appointed as a Supervisor in National Stadium in the pay scale of Rs.700-1100. On 1st April, 1984, Sports Authority of India (SAI) was created as an autonomous body and the petitioner was taken on deputation as Stadia Supervisor in the pay scale of Rs.700-1100 which he was drawing in his parent office, Netaji Subhash Institute of Patiala. The petitioner became a Cadre Officer of Sports Authority of India from 1st May, 1987.

3. Later on, the petitioner was provisionally promoted as an Assistant Director w.e.f. 20th April, 1987 subject to approval from his parent office. In January, 1991 he was appointed as an Asst. Director with retrospective effect, with effect from 1.10.1984. He was promoted as Deputy Director on a review DPC with effect from 1st August, 1986 on an *ad hoc* basis by an order dated 8th January, 1991 with notional

fixation of pay and monetary benefits admissible from the date of assumption of charge.

4. According to the petitioner, though Shri C.R. Gopinath/respondent no.3 was attached on deputation with the Sports Authority of India, the rules pertaining to appointment on deputation were not followed in his case. The respondent No.3 was appointed as a Director with effect from 1st June, 1991 though, according to the petitioner, he had tendered his technical resignation from the post of Chief Accounts Officer in his parent department i.e. India Trade Promotion Organization (ITPO) only on 28th November, 1991. ITPO had intimated the respondent No.1 that his resignation from ITPO was accepted from 1st June, 1991. The appointment order of the respondent No.3 was issued on 10th August, 1992 by respondent No.1 and the ITPO (parent office of respondent No.3) had also conveyed the sanction of the competent authority for permanent absorption of respondent No.3 with respondent No.1 on 1st June, 1993.

5. The petitioner had made representations seeking directions for holding a review DPC as per the position prevailing on 5th August, 1991 for considering his case. The petitioner had filed a writ petition being CWP No.2187 of 1992 in the High Court of Delhi at New Delhi which was later transferred to Central Administrative Tribunal and was numbered as TA No.7 of 1996. The said petition, TA No.7 of 1996 was

disposed of by the Tribunal vide order dated 15th September, 1997 with a direction for preparation of conjoint eligibility list of those who had to be posted/promoted as Director and for holding a review DPC for giving the notional promotion.

6. Before granting the notional promotion, the respondent no.1 had filed a writ petition being CWP No. 5298 of 1997 which was also disposed of by an order dated 1st May, 2000. Pursuant to the order dated 15th September, 1997 in TA No.7 of 1996, the review DPC was held and the petitioner was promoted as director and notional promotion was given from 5th August, 1991. Against the implementation of the order passed in the TA no. 7 of 1996 dated 15th September, 1997, the petitioner filed a contempt petition no. CCP No. 130 of 2001.

7. The petitioner had claimed that in the combined seniority list, the order passed by the Court was not complied with, as he was assigned the seniority with effect from 1st January, 1986 as Assistant Director though he was entitled for promotion as Assistant Director as on 1st October, 1984 and was promoted to the post of Deputy Director with effect from 1st August, 1986. The petitioner also contended that he was senior to Shri L.S. Ranawat, who has been shown as regular Assistant Director with effect from 16th October, 1984 whereas the petitioner was shown as Assistant Director with effect from 1st October, 1984. The petitioner had thus contended that the position shown by the

respondents was erroneous as he could not be a Deputy Director and a Director on the same date, i.e., 5th August, 1991.

8. The Contempt petition filed by the petitioner was dismissed as not maintainable as the High Court in its interim order dated 7th March, 1994 had not fixed any time limit for holding the DPC meeting. However, review DPC was held on 16th April, 2001 and the petitioner was promoted as a Director along with others w.e.f 5th August, 1991. Others who had been promoted along with the petitioner were Shri T.C.Sharma, Shri S.N.Mathur, Shri G.S.Anand, Dr.P.C.Kashyap and S.K.Saggar. The seniority of the petitioner was fixed on the basis of regular appointment as Deputy Director and the petitioner had also been promoted as director on ad-hoc basis w.e.f. 4th September, 2000. While disposing off the CCP No. 130 of 2001 the following order was passed.

" Counsel for the respondent has stated that the petitioner has now been promoted in the post of Regional Director by order dated 27th October, 2001 and has placed the copy they are off on the file. He submitted that now nothing survives in this petition as directions of this Court contained in the order of the Division Bench dated 1.5.2001 have been complied with. Counsel for the petitioner on the other hand, has stated that the petitioner should have been promoted in the year 1995 to the post of regional director when his junior Mr. Gopinath was given promotion. If it is so, the petitioner may, if so likes, file a substantive petition for getting his grievance redressed in accordance with law. But so far as this petition is concerned, the direction of the Division Bench have been complied with."

9. While disposing of the Contempt petition of the petitioner, liberty was granted to him to file a substantive petition pursuant to which the petitioner filed OA no. 949 of 2002 seeking directions to hold a review DPC on 5th August, 1991 by including those officers also who had fulfilled the eligibility criteria of 5 years of service as Deputy Director or 10 years of combined service as Deputy Director and Assistant Director and to seek that deputation of respondent no.3 on promotion post of director and subsequent absorption with respondent no.1 be declared as illegal and contrary to the service byelaws of respondent no.1 and to grant promotion to the petitioner as Regional Director from 1995 and as Executive Director from 2001 and to grant financial benefits and arrears from 1986 to 1991 as Deputy Director and from 1991 to 2000 as director.

10. The petition being O.A No. 949 of 2002 was disposed of by the Central Administrative Tribunal without notice to the respondent no.1 directing respondent No.1 to consider the representations made by the petitioner. Pursuant to the order of the Tribunal the representations of the petitioners were decided by order dated 7th October, 2002.

11. Against the order dated 7th October, 2002 the petitioner filed yet another O.A No.3192 of 2002 which was disposed of by order dated 2nd March, 2005 declining the claim of seniority in the grade of Director over respondent No.3 and grant of financial relief and arrears from

1.8.1986 in the rank of Deputy Director and from 5th August, 1991 in the rank of Director and declining to declare that the absorption of respondent no.3 in respondent no.1 was against the bye laws of respondent no.1 and other statutory rules and also declining to grant promotion to the petitioner as Regional Director from 1995 and as the Executive Director from 2001. The petitioner has impugned the said order in the present writ petition.

12. After hearing the petitioner in person and learned counsel for the respondents it is apparent that the Writ Petition No.2187 of 1992 filed by the petitioner was transferred as TA no.7 of 1996 before the Central Administrative Tribunal which was disposed of by an order dated 15th September, 1997 holding that the respondent no.1 shall consider all the eligible candidates in accordance with the recruitments rules and shall prepare a panel on merit and thereafter, determine the number of vacancies available for the post of Director and pass appropriate orders in favor of those who would be eligible in accordance with the seniority list. The respondent filed a writ petition being W.P.(C.) No.5298 of 1997 against the order dated 15th September, 1997 which was disposed of by order dated 1st May, 2000 declining to interfere with the order of the Tribunal dated 15th September, 1997 and directing the respondent to complete the process of selection within a period of three months.

13. Consequent to the order passed by the Tribunal and the High Court, the promotion of the petitioner was approved notionally with effect from 5th August, 1991 on the recommendation of review DPC and the actual benefit of pay to the petitioner was allowed from the 4th September, 2000, i.e., the date he was promoted as Director on *ad hoc* basis. It was also held that the petitioner will not be entitled for arrears of pay on the basis of notional fixation by order dated 25th April, 2001.

14. A review DPC by the Personal Advisory Committee was also held on 7th June, 2001 which recommended promotion of Shri G.S. Anand, Dr. P.C. Kashyap and Shri S.K. Sagar on *ad hoc* basis against four vacancies available at that time. The Personal Advisory Committee in its meeting held on 7th June, 2001 also considered the review DPC for the post of Director as on 5th August, 1991 which was held on 16th April, 2001 and noted the notional promotion given to the petitioner with effect from 5th August, 1991. On 7th June, 2001 on account of *inter se* seniority of the Directors having undergone a change, the revised seniority list was circulated and the objections were invited and the objections received from all officers were considered except K.N. Sharma who had made an allegation of conspiracy and, therefore, a high-power committee had been set up.

15. Though on 28th January, 2000 the Personal Advisory Committee had considered the cases of Shri G.S. Anand, Dr. P.C. Kashyap and

Shri S.K. Sagar and Major C. Mascarenhas who were eligible under the rules at that time for promotion to the post of Regional Director, however, on account of review DPC for the post of Director held on 16th April, 2001, the petitioner and another person had also become eligible for consideration. Therefore, the case of the petitioner along with others was also considered. The requirement for promotion to the post of Regional Director was five years regular service as Director. The PAC (Personal Advisory Committee) had also laid the criteria for consideration of five ACRs as provided in rules, out of which three ACRs were required to have 'Very Good' grading and two ACRs with the grading of 'Good' with no adverse entries in any year under consideration, were required. Since the petitioner had become eligible for consideration on the basis of his notional promotion as Director, the PAC decided to consider at least one ACR giving assessment about the post of the Director. In case of petitioner, no ACR for the post of Director was available and he had not met the criteria laid down by the PAC, therefore, the PAC in its meeting held on 7th June, 2001 did not recommend the case of the petitioner to the post of Regional Director as on 28th January, 2000. Consequently, the petitioner cannot claim that he is entitled for promotion to the post of Regional Director from 1995 after he was given notional promotion as Director from 5th August, 1991 nor he is entitled for promotion as Executive Director from 2001.

16. The petitioner has laid great emphasis on the plea that respondent No.3 could not be absorbed as Director with effect from 1st June, 1991. The plea of the petitioner is not sustainable as he has relied on un-amended rules of respondent No.1 on the basis of which it cannot be held that the respondent No.3 was not entitled for absorption. The respondent No.1 had revised the service byelaws in 1992 and had also framed the recruitment rules for all the posts including the administrative cadre and consequently the absorption of respondent No.3 cannot be challenged by the petitioner on the basis of revised service byelaws. The petitioner, who appears in person, has very vociferously contended relying on the recruitment rules that the method of selection for the post of Director was selection on merits in the scale of 3700-5000 and the age limit for direct recruitment was not below 30 years and not above 40 years relaxable upto 10 years in the case of departmental candidates and the candidate had to be a medal winner in the Olympics/Asian Games/World Championship or the candidate should have participated in Olympics/Asian Games/World Championship in case of SC/ST. Apparently, absorption of the respondent No.3 on 1st June, 1991 cannot be invalidated on the basis of these rules which had been framed later on in 1992.

17. The petitioner has also contended that the method of recruitment was not absorption and, therefore, the respondent No.3 who was on deputation could not be absorbed from 1st June, 1991 as on that date

absorption was not the method of recruitment and has relied on Service Byelaw 6 of Sports Authority of India which is as under:-

“6. Methods of Recruitment

- (1) Recruitment to a post under the Society may be made:-
 - (i) by promotion;
 - (ii) by direct recruitment;
 - (iii) by deputation;
 - (iv) by re-employment of a retired employee of the Society or Central/State Government or any other organization;
 - (v) On contract for a specified period of technical personnel on specific terms as approved by Vice-Chairperson, SAI.
- (2) The Appointing Authority of Governing Body as the case may be, shall in each case determine the method by which vacancies shall be filled by any of the above methods. In doing so, the Appointing Authority shall pay due regard to, (i) the provisions of the employment Exchange (Compulsory Notification of Vacancies) Act, 1959 and (ii) orders for reservation in service for Scheduled Castes/Scheduled Tribes, Ex-servicemen, handicapped and any other categories, as may be notified by the Govt. of India from time to time, and (iii) in any other manner, as may be decided by the Governing Body in individual cases, having special regard to the situation or requirement.”

18. The plea of the petitioner is not sustainable as he has ignored the circular dated 11th February, 1991 of respondent No.1 which was pursuant to the meeting of the Governing Body held on 18th January, 1991 approving amendments to Sports Authority of India Service

Byelaws, 1987 including byelaw No.6 relating to absorption of deputationist in SAI/Respondent No.1 on permanent basis. The amendment also sought modifications in Rule 36 regarding seniority of deputationist absorbed in Sport Authority of India/respondent No.1 contemplating that the appointing authority shall determine the number of vacancies in each recruitment year earmarked for absorption of deputationist on permanent basis with due regard to the claims of cadre employees in the feeder grade. It further contemplated that notwithstanding any other provision or any byelaw in service byelaws, the power to permit permanent absorption of deputationist against the post which was outside the purview of Personal Advisory Committee shall vest in the Director General. Consequently, the argument of the petitioner that recommendations for permanent absorption of deputationist in the grade of Director, inclusive of respondent No.3, who was sent on 23rd August, 1991 and which ought to have been approved by Personal Advisory Committee only and not by the Director General cannot be accepted. According to the amended service byelaws, the appointment above the level of Regional Directors were required to be made by the Personal Advisory Committee and the appointment of the Director could be made by the Director General. Therefore, the plea of the petitioner that the respondent No.3 could not be appointed as Director on absorption from 1st June, 1991 cannot be accepted. The petitioner, in the facts and circumstances, has been unable to demonstrate and establish that the appointment of respondent No.3 by

absorption with effect from 1st June, 1991 can be invalidated. The petitioner also cannot contend successfully on this ground that he is entitled for selection to the post of Regional Director and pay and emoluments of the post of Regional Director and Executive Director.

19. The Tribunal has relied on the OM No.9/11/55-RPS dated 22nd December, 1959 contemplating that seniority of a transferee on deputation is counted from the date of absorption. The respondent No.3 was absorbed as a Director on 1st June, 1991 whereas the petitioner was promoted on notional basis as Director with effect from 5th August, 1991 and therefore, the petitioner cannot claim seniority over respondent no.3

20. Though this Court has already held that the absorption of respondent No.3 on 1st June, 1991 cannot be invalidated on the grounds raised by the petitioner, however, for the sake of arguments, even if, the seniority of respondent No.3 is not considered with effect from 1st June, 1991, the petitioner is not entitled to claim appointment to the post of Regional Director and Executive Director from the dates claimed by him. Considering the minutes of the meeting held on 7th June, 2001 of Personal Advisory Committee, it is apparent that the petitioner could not be promoted/selected for the post of Regional Director as the petitioner did not meet the criteria laid down by the

Personal Advisory Committee for promotion to the post of Regional Director. The PAC had considered the eligibility of the petitioner. As he had been promoted on notional basis, therefore, it had been decided to assess his suitability at least on the basis of one ACR. However, as the petitioner did not have even one ACR before the PAC on 7th June, 2001 as a director, therefore, he could not be selected/promoted to the post of Regional Director and not on account of the fact that respondent No.3 was absorbed as Director on 1st June, 1991 whereas the petitioner was given notional promotion as Director with effect from 5th August, 1991. Consequently, the inevitable inference is that the petitioner cannot claim selection/promotion to the post of Regional Director on any of the grounds as has been canvassed by him before us and consequently he is not entitled for emoluments of the post of Regional Director. The petitioner was given notional promotion with effect from 5th August, 1991 and was granted actual benefit of pay from 4th September, 2001, the date on which he was promoted as Director on *ad hoc* basis. The petitioner, therefore, is not entitled for the relief that respondent No.3's absorption was against the byelaws of respondent No.1 and other statutory rules and directions to the respondent No.1 to grant promotion to the petitioner as Regional Director from 1995 and as Executive Director from 2001. No other point or ground has been agitated by the petitioner. In the circumstances, the order of the Tribunal dated 2nd March, 2005 in OA No.3192 of 2002, K.N. Sharma v.

Sports Authority of India cannot be faulted in the facts and circumstances.

21. Consequently, the findings of the Tribunal that the petitioner cannot claim seniority in the grade of Director over respondent No.3 cannot be faulted. There are no such illegalities or irregularities in the order of the Tribunal dated 2nd March, 2005 which will entail interference by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India. The writ petition is without any merit and it is, therefore, dismissed. Parties are, however, left to bear their own costs.

ANIL KUMAR, J.

November 26, 2009
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VIPIN SANGHI, J.