

IN THE HIGH COURT OF DELHI AT NEW DELHI

+

W.P(C) No.1173/2010

%

Date of Decision: 24.02.2010

Sher Singh

.... Petitioner

Through Dr.M.P.Raju, Advocate

Versus

UOI & Anr

.... Respondents

Through Mr.R.V.Sinha, Advocate.

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

HON'BLE MR. JUSTICE MOOL CHAND GARG

- | | | |
|----|---|-----|
| 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.

The petitioner filed an original application being O.A No.2328/2008 titled Sher Singh v. Union of India & Ors. before Central Administrative Tribunal, Principal Bench seeking quashing of order dated 4th January, 1996 whereby on implementation of Supreme Court order dated 14th July, 1994 and clarificatory order dated 27th March, 1995 and on review of promotion of Scheduled Castes/Scheduled Tribe officers to Grade III was undertaken by way of reservation and the petitioner had been promoted against 1992-1993 vacancies and accommodated against the vacancy which arose on 29th March, 1993. The petitioner had also prayed for a direction to give promotion to the

petitioner to Grade III of Indian Statistical Service (ISS) from the year 1989-1990. The original application of the petitioner was dismissed by the Central Administrative Tribunal by order dated 28th October, 2009 which is challenged by the petitioner in the present writ petition.

Brief facts to comprehend the disputes are that petitioner was recruited directly to Grade IV Indian Statistical Service hereinafter referred to as 'ISS' on 6th December, 1982. The petitioner was on training which he completed on 31st August, 1984 and was posted as Assistant Director in the Central Water Commission.

For promotion from Grade IV to Grade III, the petitioner was considered along with other eligible officers in 1987, however, DPC after assessment did not find petitioner fit for promotion to Grade III, therefore, his name did not appear in the order issued on 24th November, 1987. In 1987 no officer belonging to Scheduled Castes/Scheduled Tribes category junior to the petitioner was promoted by order dated 24th November, 1987.

In an original application filed before the Tribunal being O.A No.1231/1989 an order dated 22nd March, 1994 was passed directing the respondents to consider promotion of the petitioner to Grade III of ISS from the date the vacancy would become available in Scheduled

Caste quota in the year 1989 together with consequential benefits including seniority.

Before the order dated 22nd March, 1994 could be implemented, the Supreme Court gave a judgment dated 14th July, 1994 in CA No.3844/1989 titled UOI & Ors v. T.R.Mohanty & Ors in the petition in which the petitioner, Sh.T.R.Mohanty had challenged the order dated 24th November, 1987 in O.A no. 336 of 1988 under which the he had not been promoted. The Tribunal had allowed the application of Sh.Mohanty holding that the reservation in the ISS was violative of Rule 13 of ISS Rules, 1961, however, the promotion of the reserved category officers was directed not to be disturbed. Consequent to the directions of the Tribunal, Rule 13 of the ISS Rules, 1961 was amended vide notification dated 20th February, 1989 giving it retrospective effect from 27th November, 1972, the date from which reservation for Scheduled Castes/Scheduled Tribes in non selection promotion was notified.

Since the order dated 22nd March, 1994 was not complied with on account of subsequent development, the petitioner had had filed a contempt petition being CP No.80/1995 for implementation of order dated 22nd March, 1994, however, later on the contempt petition was withdrawn, as the petitioner was satisfied by follow up orders which had already been passed by the respondents.

Thereafter another contempt petition being CP No.374/1997 was also filed on 22nd December, 1997 which was rejected by the Tribunal on the ground of limitation and on account of earlier contempt application withdrawn by the petitioner and on account of the representation made by the respondents that the order had been complied with. The order of dismissal of the contempt petition was challenged by the petitioner in the High Court of Delhi in a writ petition being W.P(C) No.3456/1998.

The said writ petition was disposed of by order dated 12th August, 2008 and the petitioner was given liberty to challenge the orders passed by the respondents by filing a fresh original application. The petitioner, therefore, filed original application being O.A No.2328/2008 challenging the order of promotion dated 4th April, 1993 whereby the petitioner was promoted against 1992-1993 vacancies and accommodated against a vacancy which arose on 29th March, 1993 which was communicated to the petitioner by order dated 4th January, 1996.

The Tribunal after perusing the order dated 4th January, 1996 has held that it is comprehensive in nature and it settles the right of the parties. It was also held that the petitioner had filed the original application before the Tribunal in 2008 because the leave had been granted to the petitioner after dismissal of his contempt petition against which a writ petition was filed. It has also been observed by the

Tribunal that the liberty was taken by the petitioner without implementing other beneficiaries and the petitioner cannot claim special advantage and equities. Tribunal also noted that no reason has been given by the petitioner as to why the persons who could be affected by the judgments had not been made parties to the original application filed by the petitioner which has been dismissed by impugned order dated 28th October, 2009. The relevant observations of the Tribunal are as under:-

“16. Of course, a retrospective effect had been given to the special rules, and the attempt of the Government was to salvage the situation by pointing out that the rules were always to be presumed as existing in the year 1972 and, therefore, the promotion given to the SC members could have been validated. But, however, a retrospective effect, according to Supreme Court, which was capable of interfering with the vested rights of persons like Mohanty, who had a right for promotion as per the rules, could not have been introduced. It has been specifically declared that the retrospective operation of the amended Rule 13 could not have been sustained. This declaration of law cannot at all be overlooked. According to the Supreme Court, Rule 13 as it existed before the amendment could not have been overlooked. Reservation for Scheduled Castes and Scheduled Tribes by the rules have been confined to appointments to the service made otherwise than by promotion alone. This was sought to be changed to read that reservation principles issued by the Central Government from time to time would govern all appointments. This was declared as impermissible. At least, in respect of the incumbents who were to be deemed as having acquired vested rights, after having completed incumbency in Grade IV service, such rights could not have been denied.

17. In the case of the applicant, a declaration in his favour had come to be passed, in 1994. But by the above time, persons senior to him in service, had acquired eligibility for promotion. Therefore, although there was a direction for considering his case from the date the

vacancies were available in the SC quota in the year 1989-90, in view of the judgment in Mohanty s case, to which the Department was a party, a reworking of vacancies and accommodation was mandatory. In matters of service, rules required to be applied uniformly and only for the reason that at some point of time there might have been possibility of a promotion by operation of a judgment, so long as such specific orders conferring promotions had not forth come, it would not have been possible for the Department to single out the case totally keeping aside the judgment of the Apex Court. The Tribunal had proceeded on the assumption that there was vacancy to accommodate the applicant in the year 1990. But when the position had been suitably worked out by the Department, after Mohanty s case, it emerged that a vacancy was then available only in 1993. The applicant has been assigned this position. The question is as simple as this, and the colour of constitutionality, and employment of jargon would not have altered the situation.

18. We also notice that the Presiding Judge who decided Mohanty s case was one of the Members of the Larger Bench. We also notice that the clarificatory orders had forth come, after almost a year of the judgment, and there was no request made by any of the parties for the review of the matter. Most importantly, we find that the ratio of the judgment of Mohanty s case did not run counter to the observations in the Indra Sahani (cited supra), since in the later decision the specific impact of a statutory rule on the situation available was being examined by the Bench of the Supreme Court, and a decision has come to be passed on merits holding that the statutory rules required implicit obedience. We do not think there is any error on substantial issue or error in the judgment in Mohanty s case as canvassed by the learned counsel for the applicant.

19. In view of the above, we see no merit in the OA. Annexure-I is comprehensive in nature, and had come to be issued in 1996. It has settled rights of parties. Only for the reason that leave had been secured by the applicant to challenge the order, behind the back of other beneficiaries, he cannot have any special advantage. There is also no reason given as to why persons who might be affected by the judgment. have not been made parties to these proceedings.”

We have heard the learned counsel for the petitioner in detail. It cannot be disputed by the petitioner that he was at serial No.592 in the seniority list of Grade IV officers dated 8th May, 1986. The other reserved category batchmates upto serial No.590 had been promoted to Grade III and the petitioner was not recommended by DPC for promotion by order dated 24th November, 1987. Even in the next DPC for promotion from Grade IV which was held on 23rd February, 1989 the petitioner was considered but was not found suitable, however, some of the officers junior to petitioner were promoted in 1989.

The Supreme Court in Mohanty's case had struck down the retrospective operation of amended Rule 13 and had held that Rule 13 to the extent it has been made operative retrospectively was unreasonable and the appeal filed by Union of India was dismissed. After the decision of the Supreme Court dated 14th July, 1994 another clarificatory application was filed highlighting the difficulties in implementing the order dated 14th July, 1994 as in the said order it had been pointed out that none of the promotions invalidly made were to be disturbed and other difficulties in respect of the general category candidates. The clarificatory application was also disposed of by the order dated 27th March, 1995 holding that if in the implementation of the directions given by the Hon'ble Court it becomes necessary to revert the Scheduled Castes candidates from the higher post to which they had been promoted under the existing rules (unamended) or under the

amended rules, that may be done and to that extent the order was modified. It was also held that if in the implementation of the directions of the Supreme Court it becomes necessary to revert the Scheduled Castes candidates, then the financial benefits given to such candidates while working in the higher posts, shall not be withdrawn and will be protected as personal to them.

The order dated 4th January, 1996 which is impugned before us was passed by the respondents and in the revised promotion order, the petitioner has been promoted against 1992-1993 vacancy which had arisen on 29th March, 1993.

The learned counsel for the petitioner is unable to impugn the order dated 4th January, 1996 being contrary to the judgment dated 14th July, 1994 of the Supreme Court and the clarificatory order dated 27th March, 1995. The learned counsel has also not been able to point out any deviation to the rule/instruction. The original application was filed without impleading the other parties. Any modification of order dated 4th January, 1996 would impact other parties who have not been impleaded. The original application OA 2328 of 2008 had been filed by the petitioner merely on account of liberty granted to the petitioner by order dated 12th August, 2008 in W.P No.3456/1998 which was filed against the dismissal of his contempt petition on 22nd December, 1997.

In the circumstances, there are no cogent reasons or grounds disclosed by the petitioner to interfere with the order dated 28th October, 2009 passed by the Tribunal. We do not find any illegality or such irregularity in the order impugned which will necessitate interference by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India. The writ petition in the facts and circumstances is without any merit and it is, therefore, dismissed.

ANIL KUMAR, J.

FEBRUARY 24, 2010

'k'

MOOL CHAND GARG, J.