

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

+ **WP (C) No.10561/2004**

% **Date of Decision: 21.03.2011**

Govt. of NCT of Delhi Petitioner
through its Secretary (Services)
Through Mr.V.K. Tandon, Advocate.

Versus

Shri Sunil Kumar & Ors. Respondents
Through Mr.Sachin Chauhan, Advocate.

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

HON'BLE MS. JUSTICE VEENA BIRBAL

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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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CM No. 13243/2010

This is an application by the petitioner/applicant for setting aside the order of dismissal dated 30th August, 2010 of the writ petition in default of appearance of the counsel for the petitioner and anyone on behalf of the petitioner.

The applicant has contended that the counsel for the applicant was not well and had requested his associate to attend the hearing in the Court. However the associate could not reach the Court in time leading to dismissal of the writ petition in default.

For the reasons stated in the application there is sufficient cause for setting aside the order dated 30th August, 2010 dismissing the writ petition in default of appearance of counsel for the petitioner.

Consequently the application is allowed, the order of dismissal dated 30th August, 2010 is set aside and the writ petition is restored to its original number.

W.P.(C) 10561/2004

1. The petitioner Government of NCT of Delhi has challenged the order dated 31.12.2003 passed by Central Administrative Tribunal, Principal Bench in O.A No.1548/2003 titled “Shri Sunil Kumar & Ors. Vs. Government of NCT of Delhi & Ors.” and the order dated 27.4.2004 in RA No. 58/2004 allowing the application of the respondents and directing the petitioner to grant the benefits of ACP Scheme to the respondents in the light of findings of the Tribunal.

2. Brief facts to comprehend the dispute are that the respondents were originally appointed in Delhi Energy Development Agency (“DEDA”), an autonomous body falling under Government of NCT of Delhi as LDC in the pay-scale of Rs.950-1500 revised pay-scale 3050-4590 with effect from different dates as applicable to them.

3. Later on service of the respondents were declared surplus w.e.f. 30.11.1999 in DEDA. The respondents were thereafter re-deployed in the Govt. of NCT of Delhi (“GNCTD”) w.e.f. 01.12.1999 as per CCS and

CCA Rules on the same post and at the same scale through surplus cell vide an order of GNCTD, Services –II Department being order No. E3/77/97/S-II/263-70 dated 25th January, 2000. The order re-deploying the respondents categorically stipulated that they are re-deployed and not freshly appointed. The order re-deploying them after they were declared surplus stipulated as under:

“.....in terms of above mentioned rules the past services rendered by the surplus employees prior to their redeployment shall not count towards seniority in the Gr-IV (DASS) under the Govt. of NCT of Delhi. **However, in other service matters they will be treated as appointed by transfer in the public interest.**”

4. The order re-deploying the respondents categorically stipulated that they were re-deployed in the pay-scale of Rs.3050-4590 from the date of respondents being declared surplus i.e. w.e.f. 01.12.1999 against the post of Gr-IV (DASS) in accordance with the provisions of the CCS (Redeployment of Surplus Staff) Rules, 1990.

5. The respondents were denied the benefit of ACP which was granted to the similarly situated persons by an order dated 21.02.2002. The respondents alleged that the previous service along with the regular service in the GNCT of Delhi has been counted for calculating the period of ACP in cases of similarly situated persons who were re-deployed from DEDA to GNCT of Delhi, however, the same had been denied to the respondents. The respondents had contended that benefit of ACP Scheme was available in case of re-deployed personnel by counting the

regular services rendered by them in their previous organization along with their regular service in the new organization where they were transferred in public interest and were neither freshly appointed nor directly appointed.

6. Against denial of ACP benefit, the respondents made a representation and relied on Condition No.14 of DOPT OM dated 09th August, 1999 which was further circulated by Finance Budget Department vide its OM No.F-14/2/99-Finance (B) dated 27.8.1999 which is as under:

“In case of an employee declared surplus in his/her organization and in case of transfer including unilateral transfer on request, the regular service rendered by him/her in the previous organization shall be counted along with his/her regular service in his/her new organization for the purpose of giving financial up-gradation under the scheme.”

7. The respondents contended that their representation was rejected by GNCT of Delhi, Deputy Secretary-II (Services) vide communication dated 9.4.2003 being letter No. F.ACP/Gr.-IV/Services/2000/170 addressed to all the Head of Departments which led to filing of an original application before the Central Administrative Tribunal contending inter alia that the “applicants are eligible for grant of financial benefits under ACP Scheme in view of the Condition No.14 of DOPT OM dated 09th August, 1999.” The respondents contended that since they were re-deployed, therefore, it could not be held that

they were directly recruited or freshly appointed and therefore, the clarification of Doubt No.0043 did not apply to them. Respondents also relied on the cases of similarly placed persons who were re-deployed after being declared surplus that were not treated as directly recruited or freshly appointed and to whom benefit of ACP was granted counting their previous service in the autonomous body and the subsequent service in GNCT of Delhi.

8. The original application was contested by the petitioner contending inter alia that the respondents had not completed 12 years of regular service in a civilian post of GNCTD and their past service in an autonomous body could not be counted for ACP benefit. According to the petitioner, denial of ACP benefit to the respondents was in accordance with clarification of Doubt No.43 of OM dated 18.07.2001 stipulating that the service rendered in an Autonomous Body/Statutory Body/State Government is not to be counted for the purpose.

9. The Tribunal, however, allowed the application after hearing the pleas and contentions of the parties holding that past services rendered by such employees as respondents were not to be counted only for the purpose of seniority, however, for all other service matters the past service rendered in an autonomous body had to be counted and treated as an appointment by transfer in public interest which is also apparent from the order of transfer dated 25th January, 2000 which is detailed

herein above. The Tribunal categorically held that if the intention was not to give the benefit of their past service on transfer in public interest for purpose of ACP Scheme, it could be so stated specifically in the order of transfer which, however, only stipulated that the past service will not be counted for the purpose of seniority only and thus exception has been carved out only for the purpose of seniority and not for other matters pertaining to service including grant of ACP scheme.

10. Referring to the point of doubt, it has been held unequivocally that past service is not to be counted for an employee who is appointed on direct recruitment in which case the past service rendered in an autonomous organization is not to be counted. Since it was not the case of the petitioner that the respondents were directly appointed to the Govt. of NCT of Delhi therefore, in terms of clarification No.43 of OM dated 18.7.2001 the past service of the respondents who were re-deployed with the Govt. of NCT of Delhi on being declared surplus in the autonomous body (DEDA) is to be counted for the purpose of ACP and thus the Tribunal allowed the petition and directed the petitioner to consider grant of benefit of the ACP Scheme to the respondents in view of the observations made by the Tribunal.

11. The review application was filed by the petitioner contending inter alia that the order of the Tribunal in a similar case of one M.L. Bhatt being OA No.1319/2003, similar benefit was denied to such employees

as respondents. The petitioner cited several Supreme Court judgments wherein the redeployed staff was held not entitled to count their past service. The petitioner also referred to one DOPT OM dated 15.3.1998 on the same lines where the past service of re-deployed employees were not considered for seniority. The Tribunal dismissed the review application reiterating its reasoning given in the original application and also stating that the judgments cited by the petitioner do not deal with the subject matter of the present case plus there is no apparent error on the face of the record that would prompt the Tribunal to review its order in original application.

12. The petitioner has challenged the orders of the Tribunal in original application and review application primarily on the ground that under the clarification issued, the past service with an autonomous body is not to be counted on recruitment of the respondents with the Govt. of NCT of Delhi. The learned counsel for the petitioner also contended and relied on the order of the Tribunal in case of M.L.Bhatt, where according to petitioner, similar benefit was denied to such employees as respondents. The learned counsel for the petitioner has also relied on WP (C) No.12246/2009 decided on 14.07.2010 titled as "Ashok Mudgal Vs. Govt. of NCT of Delhi & Ors.".

13. This Court has heard learned counsel for the parties and has perused the record of the Tribunal produced along with the writ

petition. The Tribunal had distinguished the case of Sh. M.L.Bhatt in whose case grant of ACP Scheme was denied to him holding that paragraph 14 of the terms and conditions for grant of ACP Scheme was not applicable in his case whereas the said paragraph squarely covers the case of the respondents herein. Perusal of paragraph 14 of the terms and conditions for grant of ACP Scheme clearly shows the conditions to be fulfilled before the previous service in an autonomous organization could be counted in case of the employees who were rendered surplus and were re-deployed. These conditions are:

(a) the employee declared surplus in the organization and

(b) it should be a case of transfer including unilateral transfer on request.

If both conditions are being satisfied then the past service which is regular service can be counted for the benefit of ACP Scheme.

14. The order dated 25.01.2000 by virtue of which the respondents were taken on the rolls of Govt. of NCT of Delhi is categorical about it, relevant portion of which is reproduced hereinabove. From the language of the order especially the later part, it is clear that the past service rendered by the respondents was not to be counted for purpose of seniority only and was to be counted for other purposes. The order of re-deployment is unambiguous and makes it categorically clear that in all other service matter and incidences, the appointment is to be treated as an appointment by transfer in public interest. Appointment by

transfer cannot be equated with direct recruitment. If the intention under the ACP Scheme or under the order of re-deployment was not to count the past service of the respondents on transfer for purpose of ACP Scheme, it could have been so stated specifically in the order. The only exception which have been carved out, therefore, is only about the seniority, therefore, no other view is possible except that the past service rendered by the respondents in an autonomous organization, which organization was also under the petitioner, has to be counted along with the service with the petitioner after their re-deployment and on transfer to Govt. of NCT of Delhi/petitioner for the purpose of ACP Scheme. Consequently the benefits of ACP could not be denied to the respondents.

15. The precedent Ashok Mudgal (supra) relied on by the petitioner is distinguishable as it pertains to the benefit of the pension scheme which was made applicable to those employees of DEDA who were re-deployed before 01.01.2004. In that case the petitioners were granted benefit of new pension scheme which was introduced by GNCTD and it was in existence at the time when those petitioners had joined the service in January, 2005 after 01st January, 2004. The petitioners in that case were claiming the benefit of old pension scheme. Apparently the disputes in the precedent relied on by the petitioner are not applicable in the facts and circumstances of the present case. A Division Bench of this Court in the case of Ashok Mudgal (supra) had

held that those employees who had joined the Government after 01.01.2004 could not take advantage of the old pension scheme retrospectively, as the appointees by transfer had not been given the benefit of appointment from a retrospective date. In the circumstances, on the basis of the ratio of the said judgment, it cannot be held that the respondents are not entitled for computation of their services rendered with an autonomous organization, DEDA while considering the entitlement of the respondents for the purpose of grant of first benefit under the ACP Scheme.

16. In the totality of the facts and circumstances the petitioner has failed to make out any such illegality or un-sustainability in the order of the Tribunal which will entail any interference by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India.

17. The Writ Petition in the facts and circumstances is without merit and is, therefore, dismissed. Parties are, however, left to bear their own costs.

ANIL KUMAR, J.

March 21 , 2011
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VEENA BIRBAL, J.