

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

+
%

W.P.(C) No. 425/2002

9th May, 2013

M.B.SAXENA

.....Petitioner

Through: Mr. Sarvesh Bisaria, Adv.

VERSUS

DELHI VIDYUT BOARD

... Respondent

Through: Mr. Vibhav Misra, Adv. for Ms. Avnish
Ahlawat, Advocate.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This writ petition is filed by the petitioner Sh. M.B.Saxena for quashing of the meeting of the Minutes of the Departmental Promotion Committee (DPC) dated 20.11.1998 and for promoting the petitioner as an Assistant Security Officer w.e.f 25.1.1968.

2. Various persons including the petitioner were put in a merit list of appointment as Ward Inspector/Gate Keeper pursuant to their being selected in terms of a notice dated 9.5.1962 issued by the erstwhile Municipal Corporation of Delhi (Delhi Electric Supply Undertaking). Petitioner was placed at serial no.1 in the list and one Sh. Rajinder Sharma was put at serial no.6 in the list. Another

person Mr. P.C.Chaturvedi was put at serial no. 3 in the list. There were disputes with respect to inter se seniority between the petitioner and Sh. Rajinder Sharma who was put at serial no. 6 in the merit list. An Award was passed by the Labour Court in favour of the petitioner and which Award was upheld by a learned Single Judge of this Court in CW No. 1624/1989 in case titled as ***Municipal Corporation of Delhi Vs. M.B.Saxena & Ors.*** decided on 11.3.1998. In spite of upholding the order of the Labour Court, this Court however, gave the following directions:-

“9. The Labour Court had taken into account all the relevant facts and had kept in mind the law applicable to the facts of the case. I do not find any error apparent on the face of record and as laid down by the Supreme Court, the High Court cannot interfere with the adjudication made by the Industrial Tribunal unless the infirmities are so serious that would affect the parties before the court. However, having regard to the fact that the award of the Labour Court, if implemented in its full, vigour, would unsettle the promotion of the second respondent and the third respondent also would be deprived of his rights, in the interest of justice, the rights of respondents 1 and 3 for further promotion have to be considered as on the 25th of January, 1968 because that was the date on which the second respondent was promoted, a committee shall be formed by the petitioner for the purpose of considering the suitability of respondents 1 & 3 and appropriate orders shall be passed without being influenced by what has happened till date and they shall be considered without any bias or prejudice. On the DPC finding respondents 1 & 3 being fit for promotion, they shall be given consequential notional benefits. The promotion given to the second respondent shall remain unchanged.

10. The writ petition is ordered accordingly.

11. The petitioner shall constitute a committee and pass appropriate orders on or before the 31st of July, 1998. It is made very clear that on the DPC finding respondents 1 & 3 fit for promotion, they shall be given their salary and consequential benefits and this shall be also taken into account while calculating the retrial benefits of the respondents 1 & 3.”

3. Accordingly, in terms of the directions of the learned Single Judge as per the

judgment dated 11.3.1998, DPC was to be held for considering the promotion of the petitioner and Sh. P.C.Chaturvedi.

4. The case of the petitioner is that the respondent did not constitute the DPC, thereupon petitioner approached this Court in a contempt petition being CCP No. 361/1998. The contempt petition was dismissed as barred by time, however, in the contempt petition, the respondent took up a stand that DPC was in fact constituted and this DPC in terms of its Minutes of Meeting dated 20.11.1998 did not find both the petitioner and Sh. P.C.Chaturvedi fit for promotion. I am informed that Mr. P.C.Chaturvedi has not filed any legal proceedings challenging the decision taken by the DPC on 20.11.1998.

5. Before I refer to the arguments urged on behalf of the petitioner, let me reproduce the Minutes of DPC Meeting held on 20.11.1998. The same reads as under:-

MINUTES OF THE MEETING OF THE DEPARTMENTAL PROMOTION
COMMITTEE HELD ON 20.11.1998 AT 4.00 P.M. IN THE CHAMBER OF
ADDL. G.M.(ADMN.)

Present:

- | | | |
|----|--|-----------|
| 1. | Sh. N.P.Singh
Addl. General Manager (A) | -Chairman |
| 2. | Sh. N.K.Jain
Addl. C.P.O.(P.III) | -Member |
| 3. | Sh. Mohinder Paul
Addl. CPC (E&P)/Liaison Officer | -Member |
| 4. | Sh. B.Subhash, | -Member |

Administrative Officer (P.IV)

Item:

To consider the promotion of two officials S/Sh. M.B.Saxena and P.C.Chaturvedi to the post of Asstt. Security Officer in the scale of pay of Rs. 210-380 (revised from time to time) as on 25.1.68 pursuant to Hon'ble High Court's order dated 11.3.98 to be implemented by 30.11.98.

In pursuance of Hon'ble High Court's Order dated 11.3.98 in CWP No. 1624/89, the DPC assessed the C.R.Dossiers of the officials under consideration as per assessment sheet (annexure).

Having made the assessment on the basis of C.R.Dossiers, as per annexure, the DPC recommends as under:

<u>Sl. No.</u>	<u>Name/E.No.</u>	<u>Assessment</u>
1.	Sh. M.B.saxena, 11448	NOT FIT
2.	Sh. P.C.Chaturvedi, 11450	NOT FIT
SD/- (N.P.SINGH) ADDL. GENERAL MANAGER (ADMN.) CHAIRMAN		
SD/- (N.K.JAIN) ADDL. C.P.O.(P.III) MEMBER		SD/- (MOHINDER PAUL) ADDL. C.P.O.(E&P) LAISON OFFICER MEMBER
SD/- (B.SUBHASH) ADMINISTRATIVE OFFICER (P.IV) MEMBER		

6. Let me also reproduce the ACRs considered by the DPC of the petitioner for the years ending 31.3.1967, 31.3.1968 and 31.3.1969 and which read as under:-

ACR:-1

DELHI ELECTRIC SUPPLY UNDERTAKING

(Municipal Corporation of Delhi

No. E/CC/69/750

Date: 26.8.69

MEMORANDUM

Through: Security Officer

Sh. M.B.Saxena is hereby informed that the following remarks have been recorded in his Confidential Report for the year ending 31st March, 1969 (**scratched**) 1967.

REMARKS BY THE REPORTING OFFICER:

1. Promptness and accuracy in disposing of work No.
2. Intelligence Keeness and industry: - "Poor"
3. Aptitude for particular type of work:- "Interested in mischief"
4. Skill in drafting :- "Poor"
5. Amenability to discipline :- "Poor"
6. Punctual Attendance :- "Poor"
7. Fitness for promotion :- "Not fit for any
8. Fitness for confirmation in the present scale: "No"
9. Grading: "Poor"

REMARKS BY THE REVIEWING OFFICER

He is therefore, required to show better performance in future.

The receipt of this memo may please be acknowledged on the duplicate of this letter attached herein.

Sd/-

ASST. PERSONAL OFFICER (E)

CONFIDENTIAL CELL (ESTT.)

ACR No. 2

DELHI ELECTRIC SUPPLY UNDERTAKING

(Municipal Corporation of Delhi

No. E/CC/69/779

Date: 26.8.69

MEMORANDUM

Through: Security Officer

Sh. M.B.Saxena is hereby informed that the following remarks have been recorded in his Confidential Report for the year ending 31st March, 1969 (**scratched**) 1968.

REMARKS BY THE REPORTING OFFICER:

Amenability to discipline: "Poor"

1. Punctual Attendance: "Poor"

2. Fitness for promotion: "No"

3. Fitness for Confirmation in the present grade:- "No"

4. General assessment of good and bad qualities: He is in the habit of spreading indiscipline amongst employee

5. Grading :- "Poor"

REMARKS BY THE REVIEWING OFFICER

He is therefore, required to show better performance in future.

The receipt of this memo may please be acknowledged on the duplicate of this letter attached herein.

Sd/-

ASST. PERSONAL OFFICER (E)
CONFIDENTIAL CELL (ESTT.)

ACR No. 3

DELHI ELECTRIC SUPPLY UNDERTAKING

(Municipal Corporation of Delhi

No. E/CC/69/1073

Date: 10.10.69

MEMORANDUM

Through: Security Officer

Sh. M.B.Saxena is hereby informed that the following remarks have been recorded in his Confidential Report for the year ending 31st March, 1969

REMARKS BY THE REPORTING OFFICER:

1. Promptness and accuracy in disposing of work: "Needs Improvement"

2. Relations with fellow Employees:- -do-

3. Amenability to discipline:- -do-

4. Punctual Attendance :- -do-

5. Fitness for confirmation in the present scale: "Not yet"

6. General assessment of good and bad qualities: "Needs Improvement in his professional work"

REMARKS BY THE REVIEWING OFFICER

He is therefore, required to show better performance in future.

The receipt of this memo may please be acknowledged on the duplicate of this letter attached herein.

Sd/-

ASST. PERSONAL OFFICER (E)
CONFIDENTIAL CELL (ESTT.)

7. I may note that photocopies of the aforesaid ACRs which have been filed appear to be carbon copies because the writing appears sometimes in the typed portion or above the portion where it would have been found in the original copy as against the carbon copy. Also, I may state that the original records are not available as per the repeated stands taken at regular times by the respondent/its predecessor-in-interest. In fact, the counter-affidavit states that possibly vested interests deliberately destroyed the original record, however, what are those vested interests are not mentioned because respondent obviously would not be able to establish the same.

8. Before me, on behalf of the petitioner, following arguments have been urged to quash the Minutes of DPC Meeting dated 20.11.1998:-

(i) That no DPC was held and which becomes clear from the fact that original record of DPC dated 20.11.1998 has never been produced.

(ii) The respondent has erred in considering the ACRs of the petitioner because the only ACRs which could have been considered were that as available on the

date fixed for promotion viz 25.1.1968 but in absence of original ACRs it would not be said that there were any ACRs which were considered.

(iii) The requirement of promotion was seniority cum fitness, and since relevant ACRs of 5 years prior have not been considered or the ACRs containing adverse reports were not pointed out to the petitioner, the same cannot be considered.

9. At the outset, I must state that decision in this case no doubt is given on the basis of the records, but this case shows that when legal proceedings have to be decided decades after the actual event, various limitations come in. Obviously, one such limitation is lack of original record. This I am saying so because this writ petition with respect to promotion w.e.f 25.1.1968 was filed in 2002 i.e after 34 years. Not only the writ petition is filed after 34 years of the relevant date, it is coming up for decision after 45 years. I have, therefore, endeavoured to do the best possible under the circumstances and the record as available.

The first argument is with respect to whether there were no Minutes of DPC Meeting dated 20.11.1998 and that thus this Court must hold that no DPC meeting took place. In my opinion, there can be no doubt as to the existence of DPC because after all the names of as many as four persons are mentioned who constituted the DPC. It is not possible, in my opinion to get Minutes of DPC manipulated, that too of the year 1998, and in which DPC the officers are specific Government Officers. The argument in this regard may sound interesting or

appealing, however, since in a writ proceeding under Article 226 of the Constitution of India detailed evidence is not led, I am inclined to accept the stand of the respondent on affidavit that there did take place DPC on 20.11.1998. This is all the more so because this was the stand of the respondent even in reply to the contempt proceedings being CCP No. 361/1998 which was initiated by the petitioner and which was dismissed as barred by time. Absence of original record cannot be used against the respondent which had no personal interest for destroying government record especially as the same was against the petitioner and one Sh. P.C.Chaturvedi. I, therefore, hold that it cannot be argued by the petitioner that there were no Minutes of Meeting dated 20.11.1998.

10. So far as the second argument urged on behalf of the petitioner that the DPC has failed to consider all applicable ACRs of five previous years of the petitioner, I find that the argument is only partially valid. Promotion had to be considered w.e.f 25.1.1968 and therefore, it was justified for the respondent to consider the ACRs of the earlier years available viz of 1966-1967 and 1967-1968. The ACRs of these two years reproduced above reflect very poor picture of the petitioner. Considering such ACRs, the DPC did not find the petitioner fit to be promoted to the post of Assistant Security Inspector. Again, I must state that though it seem to be obliquely argued that even the ACRs are probably fabricated documents, I refuse to accept this oblique argument urged on behalf of the

petitioner because there appear on the ACRs initials of the officer at the relevant point of time and also that there exist proper serial nos. to the ACRs. I do not think fabrication can therefore take place of government record as is sought to be urged on behalf of the petitioner. Once we take the ACRs as genuine the DPC was perfectly justified in not considering and holding that the petitioner was not fit for promotion. The argument that petitioner was never given the ACRs and therefore, the same cannot be looked into, prima facie is a valid argument in law, but as already stated above, the writ petition having been filed 34/35 years after the ACRs were drawn up is coming up for decision after 45 years, there all these aspects do not permit me to allow challenge to the ACRs at this stage. Further, the original entity being the Delhi Electric Supply Undertaking which was part of the Municipal Corporation of Delhi long back ceased to exist, BSES was replaced by Delhi Vidhut Board (DVB) and which has thereafter been replaced/succeeded by Delhi Transco Limited. I, therefore, in the peculiar facts of the present case, do not find that on the ground of non-supply of ACRs to the petitioner, petitioner should today be allowed to challenge the ACRs of the years 1966-1967 and 1967-1968. For the completion of narration I must state that DPC ought not to have considered the ACR of the years 1968-1969, however, even if we exclude the said ACR, on the basis of ACRs of two earlier years DPC was entitled to decide that the petitioner was not fit for promotion. The argument on behalf of the petitioner that

five years' ACRs should be considered is an argument of desperation because if after all there are no ACRs of five years, DPC would have to make do with whatever ACRs were available and since two ACRs were available DPC considered the ACRs of the years 1966-1967 and 1967-1968. It may be noted that after all DPC in 1998 was considering record which was no less than twenty two years and thus some imperfections are bound to creep in but the same cannot be allowed to change the overall conclusions of the DPC. These arguments urged on behalf of the petitioner are also rejected.

11. I must state that it is relevant, though not final that another person Sh. P.C.Chaturvedi who was also rejected by the DPC on 20.11.1998 has not challenged the decision of DPC, and which possibly must be because there would have taken place a DPC and both petitioner as well as P.C.Chaturvedi would have been found unfit for promotion.

12. In view of the above, there is no merit in the petition, which is accordingly dismissed, leaving the parties to bear their own costs.

MAY 09, 2013
ib

VALMIKI J. MEHTA, J.