

IN THE HIGH COURT OF DELHI AT NEW DELHI

Order reserved on : 8th September, 2017

Date of decision : 16th May, 2019

+ W.P.(C) 5232/2016

ASHOK HOTEL MAZDOOR JANTA UNION..... Petitioners

Through: Mr. Rakesh Sharma, Adv.

versus

MANAGEMENT OF ASHOK HOTEL Respondent

Through: Mr. Ujjwal K. Jha, Adv.

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT

ANU MALHOTRA, J.

1. The petitioners namely Mr. Ashok Bhaskaran s/o Late Sh. G. Bhaskaran and Mr. Shiv Kumar Upadhyaya s/o Late Sh. Deep Chand Upadhyaya through the Ashok Hotel Mazdoor Janta Union vide the present Writ Petition (Civil) No. 5232/2016 seek the following reliefs:-

“a). direct the respondent to promote the petitioner employees, namely Sh.Shiv Kumar Upadhyaya and Sh.Ashok Bhaskaran w.e.f. 20/Nov/2002 as STOREKEEPER along with all consequential benefits;

b). set aside and/or modify the award dated 21/May/2010 passed by the Ld. PO, INDUSTRIAL TRIBUNAL-II, Delhi and issue clear directions to the respondent to promote petitioner employees namely Sh.Shiv Kumar Upadhyaya and Sh.Ashok Bhaskaran as STOREKEEPER w.e.f. 20/Nov/2002 along with all consequential benefits;

c). pass any such other or further order which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case in the light of the above averments and in the interest of justice."

2. Vide the award dated 21.05.2010 in I.D. No. 281/10, the learned POIT, Karkardooma Courts, Delhi in relation to the reference made by the Government of NCT of Delhi referred the dispute to the Industrial Tribunal to the effect : -

"Whether demand to promote Sh. Ashok Bhaskaran S/o Late Sh. G. Bhaskaran and Sh. Shiv Kumar S/o Late Sh. Deep Chand as Storekeeper in the scale of 4530-6455 w.e.f. 20.11.2002 from the date, their juniors Sh. Prakash Chand and Sh. Sudesh Dahiya were promoted, is justified; and if so, to what relief are they entitled, and what directions are necessary in this respect."

held that the management of the respondent would consider the case of the workmen i.e. the petitioners herein, who had been ignored, for promotion to the post of Storekeeper as they were entitled to be considered on promotion as Storekeeper. It was expressly observed vide the said award itself that "except this", no other relief could be given to them at that stage.

3. The observations in para-17 of the said award are to the effect:-

"Relief:- In view of my findings on issue No. 1, I hold that Management shall consider case of the workmen, who have been ignored, for promotion to the post of Storekeeper as they were entitled to be considered for promotion / appointment as Storekeeper. Except this, no other relief can be given to them at this stage."

4. Further, the learned POIT, Karkardooma Courts, Delhi also observed vide para-18 of the said award to the effect : -

“Before parting with the award, I feel constrained to observe that Ashoka Hotel is owned by ITDC, a State owned Corporation. Such an open favouritism in favour of some chosen workers and open discrimination against another set of workers as displayed in the present case is a serious matter. To curb such tendency in the Management, I hope Management would rise to the occasion and order initiation of a high level vigilance inquiry to inquire into the circumstances under which open favouritism has been shown to two workers and other two were designedly ignored and take stern action against the officials responsible for it. A copy of this award be sent to Chairman, I.T.D.C. for compliance of directions.”

5. The petitioners seek that they be promoted w.e.f. 20.11.2002 as Storekeeper alongwith all consequential benefits and that the award dated 21.05.2010 be modified accordingly.

6. No notice of the petition is indicated to have been issued. The respondent, however, put in appearance through counsel on 23.03.2017 when the matter was directed to be listed for preliminary hearing on admission on 30.05.2017 with the directions to both sides to file their brief note of submissions on 30.05.2017 and that on 30.05.2017, the matter was renotified for 08.09.2017 so that the written submissions of the respondent could be brought on record, which was stated to have been filed on 29.05.2017 with the written synopsis of the petitioners being already on record. On 08.09.2017, the oral submissions were made on behalf of either side on the aspect

of the maintainability of the petition and the order was thus reserved on the maintainability of the petition.

7. The written submissions of the respondent filed on 29.05.2017 indicate that the petitioners have since been promoted to the post of Storekeeper vide office order dated 25.06.2013, which directions are stated to have been so done after following the due selection process.

8. Vide the impugned award dated 21.05.2010, the issues as mentioned in para-17 of the said award as reflected in para-3 above, the contentions of the petitioners are to the effect that in as much as the learned POLC-XVII, Karkardooma Courts, Delhi had held that the petitioners had been ignored for promotion to the post of Storekeeper and that the management through the testimony of the management witnesses established that no record pertaining to the interview had been produced and that the workmen were deprived of their legitimate right to appear before the Interview Board and it is further observed vide para-14 of the learned POLC-XVII, Karkardooma Courts, Delhi to the effect that *“If they do not fulfill the eligibility criteria why they were called for interview”*. The petitioners contended before the learned POLC-XVII, Karkardooma Courts, Delhi that they had been sent back by the Interview Board observing to the effect that *“since interview was not being held for the post of Storekeeper and was held for the post of Storeman, therefore, they need not appear”*, which was also observed by the learned POLC-XVII, Karkardooma Courts, Delhi vide para-15 that it was an admitted case of both the parties that the

workmen i.e. the petitioners had been working as Storeman in store department since the inception of their service i.e. since 1997 and that both Prakash Chand and Sudesh Dahiya were given promotion as houseman and room attendant respectively in housekeeping department and that it was also observed vide para-15 of the award in question that it had been admitted by MW-1 Sh. R.L. Ramanand that both Prakash Chand and Sudesh Dahiya were not working in the store department prior to 2001 and this aspect was not considered by the management, which clearly showed that the officials of the management had openly favoured Prakash Chand and Sudesh Dahiya and had deliberately ignored the claims of the workmen / petitioners due to reasons best known to them, which clearly shows favouritism on the part of officials of the management.

9. Apparently, the learned POLC-XVII, Karkardooma Courts, Delhi granted the relief to the extent that the promotion of the participants be considered as they were entitled to be considered for promotion / appointment as Storekeeper and no other relief was granted to the petitioners.

10. Apparently at that stage when the award in question was passed as the candidatures of the petitioners for promotion to the post of Storekeeper had not been considered, the learned POLC-XVII, Karkardooma Courts, Delhi vide the award in question had directed the respondent to consider the case of the workmen, who had been ignored for promotion to the post of Storekeeper as they were entitled to be considered for promotion for the appointment as Storekeeper.

11. Apparently as rightly observed by the learned POLC-XVII, Karkardooma Courts, Delhi, no further relief could be given to the petitioners at that stage.

12. The petitioners have submitted that vide letter dated 09.05.2011, the General Manager of the respondent has written to them that they were not entitled to be promoted as Storekeeper. As observed hereinabove as submitted by the respondent that the petitioners have already been promoted to the post of Storekeeper vide office order dated 25.06.2013, in the event of the petitioners being aggrieved by the communication made to them vide order dated 09.05.2011 on behalf of the respondent, it was open to the petitioners to seek redressal in relation thereof but the same could not be challenged through the prayers made vide the present petition, which prayers have been reflected in para-1 hereinabove.

13. The petitioners also filed an application for execution bearing No. 19/13 of the award dated 21.05.2010 in I.D. No. 281/10 of the learned POIT, Karkardooma Courts, Delhi seeking recovery certificate of Rs.8,42,870/- in their favour and against the management of the respondent for stated compliance of directions vide the award in question dated 21.05.2010 in I.D. No. 281/10 of the learned POIT, Karkardooma Courts, Delhi, which application was rejected vide order dated 01.08.2014 by the learned POIT, Karkardooma Courts, Delhi observed to the effect : -

“Thus, the perusal of the Award dated 21.05.2010 shows that it was only held, by the Ld. POIT, that the

management shall consider the case of the management for promotion and except this no other order was passed. The case of the management is that it has considered the case of the applicants for promotion and they were not found fit for the promotion.

Vide the present application, the applicants are seeking recovery certificate for Rs.4,21,435/- each in their favour. It is clear that no such order of recovery of any money was passed by the Ld. POIT and therefore, the application cannot be allowed.

The application / execution stands dismissed. File be consigned to Record Room.”

14. Apparently, there is no infirmity in the said observation dated 01.08.2014 in as much as the only relief granted vide the award dated 21.05.2010 in I.D. No. 281/10 of the learned POIT, Karkardooma Courts, Delhi was to the effect as directed in para-17 thereof.

15. The petition is apparently thus not maintainable in its present form, and is declined.

16. The petitioners may, however, seek redressal in relation to their claim of seniority, if any, in accordance with law.

ANU MALHOTRA, J

May 16th, 2019/MK