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

% Judgment delivered on: 09.11.2022

+ W.P.(C) 5535/2022 & CM APPL. 16487/2022

RAJENDER SWAROOP SHARMA

..... Petitioner

versus

THE COMMISSIONER MUNICIPAL CORPORATION OF
DELHI AND ORS.

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. M.C. Sharma, Advocate.

For the Respondents: Mr. Tushar Sannu, Standing Counsel for MCD
with Mr. Prateek Tomar, Advocates and Mr.
W.U. Khan, SI for MCD.

CORAM:

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner impugns order dated 08.05.2019 in Transfer Application No.2/2015 whereby the Revision Petition filed by the respondent which stood transferred to the Central Administrative Tribunal (Tribunal) has been allowed.

2. Petitioner had filed a Civil Suit for declaration contending that the petitioner was entitled to get seniority and promotion and higher grade of financial benefits from the same date as his juniors were given.

3. The contention of the petitioner was that the petitioner was appointed as a Physical Education Teacher on MCD on 02.08.1974, and in the seniority list of the Physical Education Teacher employed upto 1990 the name of the petitioner appeared at Serial No.3 and that of respondents No.2 to 8 were shown at Serial Nos.12, 14, 16, 17, 20 and 22 respectively. A seniority list was prepared on 01.11.1990 and filed on the record of the High Court and filed on the record of the High Court in W.P.(C.) No.870/1987, titled *Puran Mal & Ors. vs. MCD*. Subsequently, another seniority list was prepared on 03.03.1994 where petitioner was shown junior to the said employees.

4. Vide judgment and decree dated 04.02.2010 the suit was decreed after trial and respondent No.1 was directed to grant higher grade along with financial benefits to the petitioner from the date his juniors were granted the said benefits.

5. Respondent filed an appeal against the said judgment/decreed being RCA No.21/2010 titled Municipal Corporation of Delhi vs. Rajender Sharma which was dismissed on 06.12.2010 on the ground that the Central Administrative Tribunal had been constituted and accordingly the appeal was not maintainable. In Civil Revision Petition No.50/2011 this Court remitted the matter to the District Judge to transfer the record of the case to the Tribunal.

6. Vide the impugned order dated 08.05.2019 the Tribunal has allowed the revision petition and set aside the judgment of the Civil Court.

7. We noticed that the Tribunal had not adverted to any of the evidence that was on the record of the suit to return a finding against the

petitioner and to set aside the judgment and decree passed by the Trial Court. As noticed above, said judgment was passed after trial and extensive evidence having been placed by the parties on record.

8. Learned counsel for the petitioner points out that the finding of the Tribunal that the Seniority List published on 03.03.1994 was not challenged is contrary to record inasmuch as, the petitioner had filed objections to the seniority list on 12.04.1994 immediately after the same was published and as per him no information has been received as to what happened to the said objections. He submits that even before the Trial Court no material was placed to show that the objections had been rejected.

9. Since the judgment and decree of the Trial Court was passed after an extensive trial and refers to the statement of the parties and the evidence led, it was necessary for the Tribunal to have at least considered the evidence on record of the suit as also the factum of petitioner having filed objections to the Seniority List and the fate thereof which, as noticed hereinabove, has not been done by the Tribunal.

10. In view of the above, we are of the view that this matter requires a remit to the Tribunal to consider the Transfer Application afresh in accordance with the material on the record of the Trial Court as also the objections raised by the petitioner on 12.04.1994 and the fate thereof. Tribunal should also examine the seniority position of the petitioner *vis-à-vis* his juniors as alleged by the petitioner before deciding the Transfer Application.

11. In view of the above, the impugned order dated 08.05.2019 is set aside. The matter is remitted to the Tribunal to consider the same afresh. It is clarified that this Court has neither considered nor commented upon the merits of the contentions of either parties. All rights and contentions of the parties are reserved.

12. Further, since the issue has been pending since the year 1990 the Tribunal is requested to expedite the proceedings and endeavor to conclude the same within a period of six months from the first date of the Tribunal.

13. The parties shall appear before the Tribunal for directions on 08.12.2022.

SANJEEV SACHDEVA, J

TUSHAR RAO GEDELA, J

NOVEMBER 9, 2022/nd