

(2013) 08 DEL CK 0364

Delhi High Court

Case No: WP (C) No. 8281 of 2011

Union of India and Others

APPELLANT

Vs

Jai Prakash

RESPONDENT

Date of Decision: Aug. 14, 2013

Hon'ble Judges: V. Kameswar Rao, J; Pradeep Nandrajog, J

Bench: Division Bench

Advocate: Amit Anand, for the Appellant; U. Srivastava, for the Respondent

Final Decision: Disposed Off

Judgement

Pradeep Nandrajog, J.

The present petition lays a challenge to an order dated August 11, 2011 passed by the Central Administrative Tribunal allowing OA No. 3020/2010 directing the petitioners to offer a Group D post to the respondent with all consequential benefits except back-wages. The respondent had staked a claim to be appointed to a Group "D" in view of a circular dated November 17, 1983 issued by the Ministry of Post & Telegraph granting certain concessions to Extra Departmental Agents (EDAs) and Daily Rated Mazdoors (DRMs); to be granted regular appointment in Group "D" post, and one of which was for outstanding performance in the field of sports. As per the policy, EDAs and DRMs who had represented the region at a All India P & T Competition for three consecutive years or had represented the All India P & T Team in National Championships were eligible to be made permanent in a Group D post.

2. From the facts which we would be noticing hereinafter it would emerge that the petitioners have been taking oscillating and vacillating stand.

3. It has been the consistent case of the respondent that he had worked as a Daily Wage Waterman under the Post & Telegraph Department from October 01, 1997 till April 30, 2000 and thereafter as an ED Substitute from July 04, 2001 till July 15, 2002 and had represented the Post & Telegraph Department in the National Competition from the year 1998 till the year 2002 in the sports of wrestling and thus would be

entitled to the benefit of the circular dated November 17, 1983. His grievance was of being disengaged from service by a verbal order on April 30, 2002.

4. Repeated representations made to the Department bore no results and hence respondent approached the Central Administrative Tribunal by filing OA No. 1368/2005 which was disposed of by the Tribunal vide order dated April 19, 2006 directing the Appropriate Authority to consider the claim of the respondent and pass a reasoned order.

5. On November 27, 2006 the Competent Authority passed an order recording therein that since respondent had neither participated in the All India P & T Competition for three consecutive years nor had represented an All India P & T Team in any National Championship he was not entitled to the benefit of the policy circular dated November 17, 1983.

6. And relevant would it be to highlight that at the first available opportunity to the petitioners to state the reasons why respondent was not entitled to the benefit of the policy circular dated November 17, 1983, aforementioned were the only reasons recorded and not that the respondent was not even entitled to be considered for being regularized to a Group D post on account of he neither having worked as a daily wager with the Post & Telegraph Department nor as an ED Substitute as claimed by the respondent.

7. Order dated November 27, 2006 was challenged by the respondent under OA No. 258/2007 which was dismissed in limine by the Tribunal without any reasons against which WP(C)2317/2007 filed by the respondent was disposed of by this Court on September 02, 2008 granting liberty to the respondent to make a fresh representation on the subject of his entitlement to be given regular appointment to a Group D post.

8. Though not expressly recorded in the order dated September 02, 2008, the reason appears to be that the respondent had not annexed documentary proof pertaining to his claim of having participated in the All India P & T Competition as also the National Championship in the years 1998 till 2002.

9. The respondent made a representation on September 24, 2008 annexing proof of having represented the Post & Telegraph Department at the All India P & T Competition for more than 3 years consecutively and having earned the "Rolling Gada" in the year 2001 and "Das Kesri" in the year 2002 and additionally having participated in the National Wrestling Championship by representing the Post & Telegraph Department at the 46th Men National Wrestling Championship.

10. The representation was rejected without recording any reasons with respect to the authenticity of the documents which respondent relied upon. A perfunctory reason stated was that the respondent had not made good the claim.

11. Respondent was compelled to file a third Original Application registered as OA No. 2018/2009 which was disposed of by the Tribunal vide order dated May 18, 2009 directing the Department to examine the certificates submitted by the respondent in support of the claim. The Tribunal observed that it was the admitted position that the respondent had worked as a Substitute ED and thus his claim came within the ambit of the policy circular dated November 17, 1983; only thing to be considered was the authenticity of the documents relied upon by the respondent.

12. Admitting that the respondent had represented the Post & Telegraph Department at the National Wrestling Championship being the 46th National Freestyle & Greco-Roman Style Wrestling Championship 1999, the claim was rejected on a ground, taken for the first time, being that, the respondent had been engaged as a Part-Time Waterman from October 01, 1997 till April 30, 2000 without following the required selection process and without being sponsored by the Employment Exchange. It was held that in that view of the matter respondent's participation at the National Level on behalf of the Post & Telegraph Department could not be recognized. It was additionally stated that Group D post had been upgraded to Group C posts and were re-designated as Multi-Tasking Staff on the recommendations of the 6th Pay Commission for which Recruitment Rules had been framed and that the respondent could be considered for appointment as and when vacancies were advertised.

13. This compelled the respondent to file the fourth Original Application registered as OA No. 3020/2010 which has been allowed by the Tribunal vide decision dated August 11, 2011 observing that the petitioners have been shifting stands. It has been directed that a Group C post should be offered to the respondent by relaxing the Recruitment Rules if any.

14. Though an attempt was made to urge before us that the respondent would not be entitled to be considered under the policy circulated dated November 17, 1983 on account of he having been engaged as a Part-Time Waterman and not as a daily wage Waterman, learned counsel for the petitioners did not take the argument much further realizing that this stand was taken by the Department after the third round of litigation had been fought and the Department had to accept the authenticity of the certificates relied upon by the respondent.

15. The contention which was seriously pressed was that due to the recommendations of the 6th Central Pay Commission which were accepted resulting in Group D posts of Multi-Tasking Staff being upgraded to Group C posts, the Tribunal could not have directed respondent to be appointed to a Group C post and that too by relaxing the Recruitment Rules.

16. Learned counsel for the respondent urged that claim of the respondent had to be considered as of the year 2002 and thus the current situation had to be ignored and the claim decided as per the position as of the year 2002.

17. Before we deal with the rival contentions, we must record our displeasure at the litigious approach adopted by the petitioners. The Government is expected to fight an honest battle with its citizens and not take false stands. If the respondent, which as a matter of fact he did, represented the Post & Telegraph Department at the National Level and represented the Northern Region in the All India Post & Telegraph sporting events, these had to be with the permission and hence the knowledge of the authority concerned and we are pained to note that having made the respondent litigate thrice, only at the fourth round the department conceded to the respondent's claim of having represented the Post & Telegraph Department at the National Level and having participated in the Post & Telegraph sporting events where different regions sent sportsperson. Had the petitioners litigated honestly, the respondent would certainly have got the benefit of the policy circular in the year 2002 itself.

18. But, if litigation enures till a point of time when a supervening event take place, it being settle law that the Court is bound to take into consideration the facts and events which have come into being and then decide the matter, it would be difficult to sustain the impugned decision because the policy circular envisages grant of regular appointment only against Group D posts and not against Group C posts.

19. However, it seriously needs to be considered whether there do not exist any Group D posts under the Post & Telegraph Department.

20. This being a matter of fact, the matter needs to be remanded to the Tribunal which shall call upon the Post & Telegraph Department to file an affidavit disclosing therein, with proof, the schedule of sanctioned posts under the Post & Telegraph Department. Thereafter the Tribunal shall look into the matter afresh to determine whether the claim of the petitioners that there are no Group D posts under the Post & Telegraph Department is correct or not. We are passing the aforementioned direction because the limited pleadings of the petitioners before the Tribunal are that Group D posts of Multi-Tasking Staff have been upgraded to Group C posts and not that there are no Group D posts under the P & T Department. The policy circular dated November 17, 1983 envisages regular appointment in Group D posts, which could be any.

21. The writ petition stands disposed of setting aside the impugned decision dated August 11, 2011. OA No. 3020/2010 is restored for fresh adjudication as per para 21 above.

22. Parties shall appear before the Registrar of the Tribunal on September 02, 2013 who shall list the Original Application before the Roster Bench of the Tribunal. No costs.