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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

RA No. 261/2003
MA No. 1476/2005
in
OA No. 2772/2002

New Delhi this the 10th day of August, 2005.

HON'BLE MR. V.K. MAJOTRA, VICE-CHAIRMAN (A)
HON'BLE MR. SHANKER RAJU, MEMBER (J)

1. Shri R. Rajesh Kumar,
S/o late Shri R. James,
R/o C-33, Mirdard Lane,
Type-III, House No.,
L.N.H. Campus,
New Delhi.
2. Shri Ajay Kumar Wadhwa,
S/o late Shri Ram Tikaya,
R/o K-85, New Mahavir Nagar,
New Delhi-110018.
3. Shri Pawan Kumar,
S/o Shri Govind Ram,
R/o 3475, Raja Park,
Shakur Basti,
Delhi-110034.
4. Shri Anil Kumar Gupta,
S/o Shri J.P. Gupta,
R/o 4118, Gali Mandir Wali,
Pahari Dhiraj,
Delhi-110006.
5. Shri Pawan Kumar Sangwan,
S/o Shri Raj Singh,
R/o A-1/45, Sultan Puri,
New Delhi-110049.
6. Shri Rati Ram Meena,
S/o Shri M.C. Meena,
R/o 340 Devli Village,
New Delhi-110062. -Applicants/Respondents in RA.

(By Advocate -None)

-Versus-

1. Government of India,
through Secretary,
Ministry of Health & Family Welfare,
Nirman Bhawan,
New Delhi.
2. The Principal and Medical Superintendent,
Vardhman Mahavir Medical College and
Safdarjung Hospital,
New Delhi.
3. Deputy Director (Admn.),
C/o the Medical Supdt.,
Safdarjung Hospital,
New Delhi.

(By Advocate Shri S.M. Arif)

4. Shri M.R. Sharma,
S/o late Shri Bharat Singh,
R/o E-3, Type-III,
Safdarjung Hospital Staff Quarters,
Kidwai Nagar,
New Delhi-110023. -Review Applicant/Respondent in OA.

(By Advocate Shri Harvir Singh)

ORDER (ORAL)

Mr. Shanker Raju, Hon'ble Member (J):

This review is filed by respondent No.4 in the OA, Shri M.R. Sharma, against an order dated 9.7.2003, passed in OA-2772/2992 with the following observations and directions:

"6. We have carefully considered the matter while the applicants are challenging the promotion of respondent no. 4 as Sanitary Superintendent as he had come from the cadre of Caretakers, which has been de-merged and absorbed in the Ministerial cadre, the respondents point out that they have acted correctly. However, we find that O.M. No. 7(466)/E/III(A)/98 dated 30.6.1999 issued by the Ministry of Finance, Department of Expenditure, dealing with the subject on caretakers of the Govt. buildings, is specifically provided that:

"In establishments which continue to retain separate posts of Caretakers, those posts shall be merged in the general ministerial cadres in the corresponding scales of pay. In other words, there will be no separate cadre of caretakers anywhere in the Government. (Emphasis supplied)."

7. The above Office Memorandum which is applicable to all the departments of the Government of India makes it clear that the post of Caretakers have been absorbed in the general Ministerial cadre from the date of issuance of the said order. It follows, therefore, that the Caretakers cannot be coupled with Sanitary Inspectors as feeder cadre for promotion to the posts of Sanitary Superintendent, after 30.9.1999. It is clear that the respondent no. 4 who had obtained the order from the Tribunal in OA 1984/2002 had concealed this fact in the Tribunal, while obtaining the order and thus sought direction for considering his case also for promotion as Sanitary Superintendent. The official respondents are harping on the point that the same was covered by the earlier Recruitment Rules of 1986. The position however is that with the abolition of the cadre of Caretakers across the board, the Recruitment Rules and the seniority list issued on the basis of the same deserved to be amended. By not doing so the respondents have acted incorrect manner and the same would have to be rectified.

8. In the above view of the matter, the OA succeeds and is accordingly allowed. The combined inter-se-seniority list of Sanitary Inspectors and Caretakers, as feeder cadre for the posts of Sanitary Superintendent is directed to be cancelled and a fresh list is ordered to be prepared keeping in view the Sanitary Inspectors alone in the feeder cadre for promotion as Sanitary Superintendent. The promotion granted to respondent no. 4 on the basis of the irregular combined seniority list is quashed and set aside. However, as an act of indulgence, it is directed that no recovery shall be made from respondent no. 4 the higher pay and allowances received by him since 9.10.2002 as he had performed the duties, though appointed to the post improperly. No costs."

2. Learned counsel of review applicant by way of MA-1476/2005 has sought a direction to maintain status quo as to the post of Sanitary Superintendent.

3. Shri Harvir Singh, learned counsel for review applicant draws our attention to notification dated 23.11.89 to contend that on amendment of the Schedule to Safdarjung Hospital (Class III Posts) Recruitment Rules, 1975 all the posts which were earlier ministerial have been designated as under General Central Service, Group 'C' non-gazetted, non-ministerial posts.

4. This document, according to review applicant was not made available even after due diligence when the matter was finally argued before the Tribunal.

5. In the above conspectus it is stated that the Tribunal while placing reliance on OM dated 30.6.99 where Care Taker of Government Buildings in Class 'C' it is decided by the President in the wake of V Central Pay Commission's recommendations that any establishment which continued to retain separate posts of Care Taker, these posts shall be merged with the General Ministerial Cadre and there will be no separate cadre of Care Taker anywhere in the Government. Learned counsel would contend that although after this notification, which has no applicability in the Safdarjung Hospital as there exists no ministerial cadre, yet official respondents' stand before the Tribunal earlier was that circular would not apply and a common seniority would have to be made, where Care Taker is a feeder category for the post of Sanitary Superintendent.

6. Original applicants (respondents in RA) have been duly served through official respondents and an affidavit to this effect has been filed by the learned counsel of official respondents. Despite opportunity, as they have not turned up, they are proceeded ex-parte.

7. Shri S.M. Arif, learned counsel for official respondents contended that though they have taken stand, yet Tribunal has observed that by the notification of 30.6.99 and abolition of the cadre of Care Taker the recruitment rules and seniority list deserved to be amended, but as the same has not been amended it a fact that no ministerial cadre exists in the Safdarjung Hospital.

8. It is trite law that in a review only an error apparent on the face of record or discovery of new material, which, even after due diligence was not in possession of the review applicant are the only scope for interference.

9. Sometimes, non-consideration of document which had not been produced even after due diligence by any of the parties, would lead to miscarriage of justice and the same has happened in this case when the matter was argued on 9.7.2003. The notification now produced where all ministerial posts have been converted into non-ministerial, there is a little scope for application of OM dated 30.6.99 and in that event promotion of review applicant on ad hoc basis cannot be set aside and this finding is contrary to the facts.

10. In the result, for the foregoing reasons, we allow this RA and restore the OA-2772/2002. Applicants in OA shall be put to notice and the matter be listed on 20.09.2005 for consideration.

S. Raju
(Shanker Raju)

Member (J)

/San./

V.K. Majotra
(V.K. Majotra) 10.8.05
Vice-Chairman(A)