
(2001) 07 RAJ CK 0063

In the Rajasthan High Court

Case No : Civil Writ Petition No. 3804 of 1999

Akshay Kumar Jagdhari

APPELLANT

Vs

The State of Rajasthan and Another

RESPONDENT

Date of Decision : 13-07-2001

Acts Referred:

Rajasthan Archeology Museum Service Rules, 1960 — Rule 28(1)

Citation : (2002) 3 WLN 533

Hon'ble Judges : J.C. Verma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

J.C. Verma, J.—The petitioner is challenging the order dated 20.1.1998 (Ann. 15), by which a direction has been issued by the Dy. Secretary to hand over the additional charge of the post of Director Archeology & Museum Department to one Shailendra Agrawal, Director Tourism as additional charge of the department, with the prayer that the petitioner be allowed to work as Director, Archeology & Museum Department, Rajasthan (herein after referred as "Department") and to hand him over the charge of the post of Director w.e.f. 1.4.1999 on the basis of his seniority/merit Under Rule 26 with all consequential benefits of computing his pension and gratuity as well.

2. The petitioner was initially appointed on the post of Custodian in department on 4.5.1968 and engaged as Publication Officer. He was regularly, appointed on the post of Publication Officer Under Rule 28(1) of Rajasthan Archeology Museum Service Rules, 1960 (herein after referred as "Rules"). He was confirmed on the post in the year 1973. He was appointed to the post of Registering Officer in promotion quota in the year 1979 till regularly selected candidates from DPC were made available. He was regularly promoted on the post of Supdt. through DPC against the quota of 1991 vide order dated 6.6.1996 (Ann. 3). According to the petitioner the post of Registering Officer was first time encadred in Rules in the year 1982 and the posts were to be filled up 50% by promotion and 50% by

direct recruitment. The petitioner was aggrieved of the provisional seniority list of Supdt./Excavation Supdt./Registering Officer when certain junior persons were said to have been shown above him in the seniority list, and therefore, had approached the Rajasthan Civil Services Appellate Tribunal. The appeal of petitioner was allowed and the seniority list 10.6.1997 was set aside with direction to hold the DPC for promotion in the prescribed ratio of the Registering Officer for the year 1982, and thereafter finalise interse seniority of Registering Officer and equivalence and then only to hold the meeting of DPC for the post of Superintendent and equivalent. It was further directed that the DPC for the post of Dy. Director could only be held after the above said DPC and finalisation of revised seniority list of Superintendents. The order of the Tribunal has been attached as Annexure-4 with the writ petition. The order Annexure-4 passed by the Tribunal was challenged by way of filing the writ petition, which writ petition was dismissed by Single Bench of this Court.

3. According to petitioner he was at Sr. No. 4 in the seniority i.e. Shyam Nandan, Prakash Chand and K.K. Bhargava were above to him. It is the contention of the petitioner that the senior most Supdt., used to be given the charge of Director. Archeology department and all three persons above to petitioner in seniority had retired in the year 1997-99 and the petitioner was senior most Supdt. left in the department.

4. As per rules the post of Director is to be filled up from amongst Dy. Director, Supdt./Excavation Supdt./Registering Officer, having 5 years experience as Dy. Director or 10 years experience as Dy. Director/Supdt. /Registering Officer and in case no Dy. Director is found suitable then the incumbents of Supdt. or equivalent posts are to be considered for promotion, provided they have 10 years experience of such post.

5. The schedule for filling up the post of Director is reproduced in the writ petition. It is the contention of petitioner that he was fulfilling all the qualification to hold the post of Director and he has always been appreciated; all the ACRs are outstanding and very good according to his information. After the retirement of one Om Prakash Sharma, who was holding the post of Director, the charge of the post of Director, has now been given to one IAS officer i.e. respondent No. 2, as additional charge, who is discharging the duties of Director as respondent No. 2. It is the submission of Counsel for petitioner that no additional charge could be given to any person, specially the respondent No. 2. as he was not fulfilling any of the qualification as prescribed in the Rules.

6. Per contra, the respondent in the written statement is justifying of handing over the additional charge of the post of Director. Archeology department to an IAS Officer. It is further submitted that the respondent had already informed vide Annexure-R2/1 dated 3.3.2000 to conduct the meeting of DPC for filling up the post of Registering Officer, wherein respondent had requested the Public Service Commission to hold the meeting in compliance Of the order passed by Service Tribunal for filling up the post of Registering Officer. The order Annexure-15 is

being justified by saying that there is no provision in service regulation to give charge of Director to senior most Registering Officer, and therefore, the department had thought it fit to put one IAS by giving him additional charge of the post.

7. It is not denied that there is nothing adverse against the petitioner. The objection has also been raised that one Harphool Singh of this very department, had filed the writ petition No. 6541/95 and the order was passed on 22.5.1996 to the effect of promotion to the post of Director would be considered after the seniority list of equivalent officer is finalised. Therefore, as per direction of the court, the list was published on 10.6.1997 when the seniority list of Registering Officer/Supdt. was made; the said list was quashed by the Rajasthan Civil Services Appellate Tribunal on 3.9.1997. Even though the order of Tribunal was passed in the year 1997, but the meeting of DPC has not been held as yet. The respondent wants to submit that until and unless the seniority list of Registering Officer and Supdt. is made final, the post of Director cannot be filled up and to overcome such a situation the respondents had given the additional charge to the IAS Officer.

8. Annexure-1 dated 9.8.1979 is promotion of petitioner as Registering Officer against a newly created post. Vide Annexure-2 dated 9.8.1998 the Govt. of Rajasthan had appointed the petitioner as Registering Officer till regularly selected persons are appointed. On 6.6.1996 the petitioner was promoted as Supdt. for the year 1991-92 as per order Annexure-3. The direction was given by the Tribunal that the post of ROs actually be encadred as per Rules and as discussed and therefore, the State was under the obligation to maintain prescribed quota of promotion and if direct recruitees of ROs were considered for substantive appointment against the vacancies of 1992 then DPC should also have been convened against the promotion quota vacancy as per prescribed ratio. It was directed that the petitioner is to be considered for promotion against the year 1982 itself keeping in view other provisions of rules and only thereafter, the seniority of Supdt. could be published and finalised as per Rules 60. The concluding para of the order of Tribunal reads as under:

In view of the discussions made above the appeal is partially accepted and the seniority list dated 10.6.1997 is hereby quashed and set aside. Respondent No. 1 is directed to hold "DPC for promotion to the post of R.O. for the year 1982 and thereafter finalise the inter se seniority of R.Os and equivalent and then only to hold the DPC for the post of Supdt. and equivalent. Further DPC for the post of Dy. Director be held only after the said DPC and finalisation of revised seniority list of Supdts.

From the above narrated facts, it is clear that the Tribunal had given the direction to the effect that the post of Registering Officer be actually encadred and the State was under obligation to maintain prescribed quota of promotion. It was further directed that the petitioner was to be considered for promotion against the year of 1982 itself and that after finalising the seniority list promotion be

made.

9. Right from 1997 the respondent has failed to frame the seniority list of Supdt. or of Registering Officers or its equivalence, as per direction of the Tribunal; because of such delayed action the petitioner and like persons are being dragged in unnecessary litigations. It is not denied that the petitioner remained senior most Supdt. after the retirement of all senior persons, who were above him.

10. Rules/regulation prescribed that the post of Director can only be filled up 100% by way of promotion from amongst the Dy. Director and in case no Dy. Director is found eligible then Supdt./Registering Officer with the qualification as mentioned in column Nos. 5 & 10 of the said Rules of 1960.

11. It goes without saying that the respondents are bound to comply with the provisions of the Rules and as soon as any vacancy of Director had fallen vacant, senior most Dy. Director could have been appointed to the post of Director. In case, DPC meeting could not be held for any reason and if the event no Dy. Director is available at all, the senior most person from amongst Supdt./R.Os and equivalent could have been given the charge, if at all the department was of the opinion that it was not possible to hold the meeting of DPC for any reason. Whatsoever, Rules do not prescribed of filling up the post from an officer of out of the cadre or of other department or to give additional charge to any person other than Dy. Director, Supdt, R.Os or equivalent. The Legislature had framed the rules to fill up the post of Director by way of promotion from amongst the officers of department itself, may be, for the reason that it requires specialised knowledge and the post can be filled up on regular or temporary basis only from amongst the officers of department as per rules. The contention of respondent cannot be accepted that for the reason that the department was not able to finalise the inter-se seniority of Supdt. or R.Os etc., it had thought it fit to give additional charge of the post of Director to an IAS officer out side the cadre of service of department. Rules do not permit so. On the same analogy and for the reason that inter-se seniority from amongst the officers of department was not finalised, if the additional charge was handed over to person out side service or cadre i.e IAS, the charge could have also be given to the senior most Supdt. or R.Os, who had the longer service in the department till regular consideration is made by DPC, provided all other qualification as mentioned in the regulation were being possessed by such incumbent.

12. The State has not been able to show any provision of law that if the rule provides to fill up the post by way of promotion from amongst the officers in service itself and in case the seniority inter se officers has not been finalised, in such situation the State is competent to hand over the charge to any person out side the cadre by avoiding the rules and regulation. The action of respondents in passing the order Annexure-15, to the effect that the respondent No. 2 an IAS officer be given additional charge of the post of Director, Archeology, cannot be sustained in eyes of law as it violates the rules, and therefore, is quashed.

13. For the reasons and discussion made above, the Annexure-15 is quashed with direction to respondent to consider the case of petitioner for promotion or to give the charge of the post of Director. Archeology to any of the Supdt./ Registering Officer, who has longest service and is senior most, on a temporary arrangement till DPC meets to decide for regular appointment. The person working in the cadre/service cannot be made to suffer because of slackness of State to finalise the interse seniority as it was required and ordered to be done in 1997 itself.

14. The State shall implement the order as per the direction within one month from the receipt of certified copy of this order.

15. With the above directions, the writ petition is allowed. No order as to cost.