

(2003) 01 KAR CK 0034
In the Karnataka High Court
Case No : W.A. No. 600 of 1999

Ashok Kumar P.

APPELLANT

Vs

Karnataka State Road Transport Corporation and Others

RESPONDENT

Date of Decision : 30-01-2003

Acts Referred:

Karnataka State Road Transport Corporation (Cadre and Recruitment) Regulations, 1982 — Regulation 10 (6) (b), 11 (1)

Citation : (2003) 2 LLJ 923

Hon'ble Judges : S.R. Nayak, J;K. Ramanna, J

Bench : Division Bench

Advocate : K. Subba Rao, for the Appellant; P.R. Ramesh for Respondent Nos. 1 and 3 and P.S. Manjunath, for the Respondent

Final Decision : Allowed

Judgement

S.R. Nayak, J.—The unsuccessful writ petitioner feeling aggrieved by the order of the learned single Judge dated November 21, 1998 in W.P.No. 14136/1991 has come up with this writ appeal.

Learned Judge by the order under appeal has dismissed the writ petition. The above writ petition was preferred by the appellant herein calling in question the action of the Management dated June 19, 1991 (Annexure-D) by which he was reverted to the post of Assistant Traffic Manager (Class-II) from the post of Divisional Traffic Officer (Class-I Jr.)- The background facts be noted briefly and they are as follows:

The appellant-writ petitioner and the fourth-respondent belong to the Schedule Caste community. Both of them were selected for the post of Assistant Traffic Manager (Class-II) in the year 1985 and subsequently they were appointed to the said post in the year 1986. The appellant was confirmed in the post on completion of probation on April 21, 1988 whereas Respondent No. 4 was confirmed in the post on December 7, 1988. When the matter stood thus, on October 26, 1989, the management published a provisional seniority list of

Assistant Traffic Manager (Gr.II) and Divisional Traffic Officers (Gr. I Jr.) inviting objections as per Annexure-H. In the provisional seniority list, the appellant and the fourth respondent were placed at serial Nos, 290 and 291 respectively. On the basis of the said provisional seniority list, by office order dated October 26, 1989, the appellant was promoted as Divisional Traffic Officer. A copy of the said proceeding is placed before the Court as annexure-A. It reads as follows:

"The Chairman & M.D., the Competent Authorities have directed the following Asst. Traffic Managers (Gr, II) to work as Divisional Traffic Officers (Gr. I Jr.) on officiating basis and are deployed at the place mentioned.

Sl.No.

Name

Place of working at present

Place to which they are deployed

Remarks

1.

2.

P. Ashok Kumar (S.C.)

Bijapur Division (Bus-stand) Bijapur

Mysore Central Bus-stand Mysore

In the vacant place

The arrangement being purely temporary. The competent authority is at liberty to cancel the same without any prior notice.

When these officers are promoted regularly to the post of DTO, the service rendered on officiating basis will not be taken into consideration.

The officials are given 7 days time including Sunday and any other general holiday to report for duty with allowance.

Sd/- (A.D. Srikantan) Chief Personnel Manager."

2. At this stage itself, it needs to be noticed that the proceedings of the Management dated October 26, 1989 by which the appellant was promoted to the post of Divisional Traffic Officer was not questioned by anyone till date. Thereafter, it appears that one Sri M. R. Mruthyunjaya Swamy preferred Writ Petition No. 23351/1989 in this Court for a direction to the Management to consider the objections filed by him to the provisional seniority list dated October 26, 1989 and to publish final seniority list. In the said Writ petition, on behalf of the Corporation, a memo was filed informing the Court that the ad hoc seniority list was at the final stage and they were going to finalize that ad hoc seniority list

of Assistant Traffic Manager (Class-II) and Divisional Traffic Officer (Class-I, Jr.) within a period of one month and that thereafter within a period a three months, they would review the promotions already made. Learned Judge of this Court, in view of the circumstances stated in the memo, disposed of the writ petition in terms of the memo. Neither the appellant nor the fourth respondent were parties to the above writ petition. After the disposal of the above writ petition on July 31, 1990, according to the Corporation, on consideration of the objections, the provisional seniority list published on October 26, 1989 was revised and the revised seniority list was published on August 31, 1990 wherein the appellant was given rank 73 and the fourth respondent rank 71. In terms of the revised seniority list, the impugned reversion order was passed on June 19, 1991.

3. Feeling aggrieved by the said action of the Management, writ petition was filed and the same is dismissed by the learned single Judge. Learned Judge has opined that the promotion of the appellant vide proceedings dated October 26, 1989 was only an ad hoc and temporary and on officiating basis and therefore, reversion of the appellant to the post of Assistant Traffic Manager (Class-II) was in accordance with the order dated October 26, 1989. Learned Judge has also opined that since the appellant did not assail the revised seniority list dated August 31, 1990, he could not have any legitimate grievance even otherwise.

4. We have heard Sri K. Subba Rao, learned senior counsel for the appellant and Sri P. R. Ramesh, learned Standing Counsel for the Corporation. Sri K. Subba Rao would maintain that since the promotion of the appellant to the post of Divisional Traffic Officer on October 26, 1989 in terms of Regulation 10(6)(b) of the Karnataka State Road Transport Corporation (Cadre and Recruitment) Regulations, 1982 (for short, Recruitment Regulations") and since the maximum period of probation stipulated under Sub-regulation (1) of Regulation 11 stood expired long before the impugned action was taken, the impugned action could not be sustained in law solely on the ground of violation of principles of natural justice and fair play in action as well as on the ground that the impugned action has the effect of taking away vested right in the appellant. In order to satisfy ourselves whether the promotion of the appellant effected on October 26, 1989 vide Annexure-A was under Recruitment Regulation 10(6) or under some other enabling provision, we pointedly asked learned Standing Counsel for the Corporation and learned Standing Counsel, quite fairly, according to us, quite rightly, told us that the promotion of the appellant as Divisional Traffic Officer (Class-I Jr.) with effect from October 26, 1989 was under Recruitment Regulation 10(6) only. The Recruitment Regulations 10 and 11 constitute a code in itself as regards recruitment by promotion. It is beneficial to refer to the relevant provisions of the Recruitment Regulations for proper appreciation of the contention of Sri Subba Rao, learned senior counsel. Sub-Regulation (6) of Recruitment Regulation 10 reads:

"10. Procedure for Appointment, xx xx (6) In the case of recruitment by promotion-

(a) If it is a post to be filled by promotion by selection, the appointment shall be by selection of a person on the basis of merit and suitability in all respects to discharge the duties of the post from among persons eligible for promotion:

(b) If it is to a post other than referred to in Sub-regulation (a) of this regulation, the appointment shall be by selection of a person on the basis of seniority-cum-merit, that is, seniority subject to fitness of the candidate to discharge the duties of the post, from among persons eligible for promotion.

(c) The authority competent to promote shall be the authority prescribed by the Corporation."

Regulation 11 reads as follows:

"11. Probation,- (1) Every candidate appointed against a permanent post shall be on probation for a period of two (2) years. This term may be extended at the discretion of the "Appointing Authority" for reasons to be recorded in writing by a further period not exceeding one (1) year. The period of probation shall not be further extended.

(2) On satisfactory completion, of the period of probation and his passing the prescribed tests if any, within the period of probation the candidate shall become eligible for confirmation.

(3) If the candidate appointed on probation is not found suitable for the post, his services may at the discretion of the Appointing Authority, be terminated at any time within the period of probation. In case of an employee of the Corporation, who is appointed on probation on selection such termination shall mean reversion to the post held by him regularly prior to such appointment.

(4) All appointments by promotion shall be on an officiating basis for a period of one year which may for reasons to be recorded in writing be extended by the appointing authority by a period not exceeding six months.

(5) At the end of the period of officiation the appointing authority shall consider the suitability of the person so promoted to hold the post to which he was promoted.

(6) If the Appointing Authority considers that the work of the person so promoted during the period of officiation is satisfactory, it shall, as soon as possible, issue an order declaring the person to have satisfactorily completed the period of officiation and is confirmed in the promoted post. Such an order, shall have effect from the date of completion of officiation.

(7) If at the end of the period of officiation or the extended period of officiation under Sub-regulation (4) of this Regulation as the case may be the Appointing Authority considers that the person is not suitable for the post to which he is promoted it shall, by order, revert the person to the post which he held, prior to his promotion.

(8) A person shall not be considered to have satisfactorily completed the period of officiation unless a specific order to that effect is made. Any delay in the issue of an order under Sub-regulation (3) or Sub-regulation (4) of this Regulation, shall not entitle the person to be deemed to have satisfactorily completed the period of officiation,

(9) A person who has been declared to have satisfactorily completed his officiation under Sub-regulation (4) shall be confirmed in the category for which he was promoted, at the earliest opportunity. Provided that, where the appointment is made by promotion to a temporary post in any service, the person concerned shall be continued on an officiating basis in the temporary post."

5. We have perused Annexure-A produced at Page 48 of the material papers. Of course, this order does not refer to Recruitment Regulation 10(6) or any other regulation. The order does not also state that the appellant is placed on probation in terms of Sub-regulation (1) of Recruitment Regulation 11. The order in unmistakable term states that the promotion of the appellant is on officiating basis. It also states that the promotion of the appellant to the post of Divisional Traffic Officer would not vest in him any right to claim that the service rendered by him in the said position should be counted for further promotion etc. Since, admittedly, the promotion of the appellant was done under Regulation 10(6) of the Recruitment Regulations, it is trite, the promotion of the appellant should be governed by the provisions of relevant other Recruitment Regulations. In other words, the Management promoting the appellant on certain terms and conditions de hors the terms and conditions stipulated under the statutory regulations would not arise. Further, it needs to be stated that all the relevant statutory regulations which govern the promotion should be read into the order made by the Management on October 26, 1989 despite the fact that, that order does not speak about probation of the appellant or duration of probation. By the time the impugned action was taken on June 19, 1991, reverting the appellant from the post of Divisional Traffic Officer (Class-I Jr.) to Assistant Traffic Manager (Class-II), the appellant had completed more than 18 months of service in the promoted post, If that is so, by virtue of the Judgment of the Apex Court in Karnataka State Road Tpt. Corporation and Another Vs. S. Manjunath, and the judgment of the Division Bench of this Court in Sri M. Balchandra Rao v. K. S. R. T. C. (Writ Appeal No. 100/1991 dated February 5, 1992) which decision was referred to with approval by the Apex Court in the case of Manjunath, it should be held that with the expiry of total period of 18 months the appellant should be deemed to have been confirmed in the promoted post. If that is the legal consequence that flows from the established facts, it is trite that by the time the Management issued the impugned order on June 19, 1991, the appellant had acquired the vested right in the post of Divisional Traffic Officer and such a right would not have been taken away in utter violation of principles of natural justice and fair play in action. On that count itself, the writ petition was entitled to be allowed. Further, it needs to be noticed that the appointment of the appellant by

way of promotion to the post of Divisional Traffic Officer with effect from October 26, 1989, till date, remains unchallenged. Secondly, the appellant was not a party to the Writ Petition No. 23351/1989 and therefore, he is not bound by whatever is said whatever is directed in those proceedings either by the Court or by the Management of the Corporation. Thirdly, before revising the final seniority list, the appellant was not given any opportunity to have his say in the matter with regard to alteration of his rank given to him in the provisional seniority list dated October 26, 1989.

6. However, Mr. P.R. Ramesh, learned Standing Counsel for the Corporation placing reliance on the provisions of the Sub-regulation (8) of Recruitment Regulation 11 contended that since there is no specific order passed by the Corporation declaring the completion of probation by the appellant, it cannot be said that the appellant has satisfactorily completed the period of officiation or probation. The above contention of the learned Standing Counsel for the Corporation is untenable in the light of the judgment of the Division Bench in *Sri M. Balchandra Rao v. K.S.R. T. C.*, as well as the judgment of the Apex Court in 2002 I LLJ 910.

7. Having regard to the statutory provisions noticed above and the legal consequence that flows from those provisions, we are of the considered opinion that the learned Judge ought not to have dismissed the writ petition only on the ground of certain stipulations/conditions set out in the Office Order dated October 26, 1989 which conditions are ex facie not in conformity with the provisions of Recruitment Regulation 11, particularly Sub-regulation (4) of Regulation 11 and Sub-regulation (6) of Regulation 10 of Recruitment Regulations.

8. In the result, we allow the writ appeal with no order as to costs and set aside the order of learned Judge: allow writ petition and quash the impugned order (Annexure-D) dated June 19, 1991. The appellant-writ petitioner is entitled to all benefits and advantages, pecuniary and otherwise, flowing from this order.