

(2010) 12 UK CK 0062

In the Uttarakhand High Court

Case No : Writ Petition No. 258 of 2004 (S/B)

Bhagwati Prasad Uniyal

APPELLANT

Vs

U.P. Rajkiya Nirman Nigam Ltd. and Others

RESPONDENT

Date of Decision : 02-12-2010

Acts Referred:

Citation : (2010) 12 UK CK 0062

Hon'ble Judges : Barin Ghosh, C.J.;V.K. Bist, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Barin Ghosh, C.J.—A Departmental Promotion Committee sat on 31st December, 1990, and on 4th January, 1991 to consider the case of Sub Engineers to be promoted to the post of Assistant Resident Engineer (Electricals). After such consideration, they prepared a list of selected candidates containing names of nine persons. Six of them were thereupon promoted and the remaining three remained in the list, which was then treated as the wait list. At the time when the selection was made, there was a tentative seniority list available. In the said tentative seniority list, Petitioner occupied the fourth place. According to the Rules, Sub Engineers on the basis of their seniority would come within the zone of consideration for promotion to the post of Assistant Resident Engineer (Electricals). Despite being fourth senior most in the tentative seniority list, admittedly, the case of the Petitioner for promotion was not considered when the aforementioned consideration took place. Subsequent thereto, the final seniority list was prepared. In this final seniority list, Petitioner occupied the thirteenth position and two of the persons selected and thereupon promoted, were listed below the Petitioner. In the circumstances, Petitioner approached the Tribunal and contended that there was no reason, while the cases of juniors of the Petitioner were considered for the promotion, the case of the Petitioner was not considered for promotion. The Tribunal finding that there is no dispute to such contention, directed the case of the Petitioner to be considered. Accordingly, the

case of the Petitioner was considered in 1997 when having noted that there was an adverse entry in the records of the Petitioner, recorded during the period July 1991 to November 1991, Petitioner is not suitable for being promoted. Petitioner once again went back to the Tribunal and challenged the finding of the Departmental Promotion Committee to the effect that the Petitioner is not suitable. Tribunal, noticing the fact that in terms of the earlier order of the Tribunal, which reached finality, the case of the Petitioner was considered in accordance with law and, inasmuch as, law prevented declaration of suitability of a person, who has received an adverse entry during the relevant period, held that there is no scope of interference with the decision that the Petitioner is ineligible for being promoted. Petitioner is before us in that background.

2. We have considered materials on record including the counter affidavit filed. There appears to be no dispute to the facts as above narrated by us. We have heard learned Counsel for the Petitioner but could not hear the learned Counsel for the Respondents, inasmuch as, he did not appear before us either yesterday or today.

3. We think, Departmental Promotion Committee, while considering the case of the Petitioner for promotion in the year 1997, as well as Tribunal, when approached by the Petitioner, being aggrieved by non selection of the Petitioner by the Departmental Promotion Committee, failed to appreciate the true purport and spirit of the earlier order of the Tribunal. We think, by the earlier order a direction was given by the Tribunal to treat the Petitioner, in the matter of consideration of his case, in the same footing as that of his juniors and, accordingly, implied that the status of the Petitioner as prevalent on the date of selection of his juniors, be considered to ascertain suitability of the Petitioner for promotion. Admittedly, that was not done and, accordingly, Tribunal could and should have interfered with the non-selection of the Petitioner by the D.P.C. held in the year 1997.

4. We accordingly, allow the writ petition, set aside the judgment and order of the Tribunal impugned in the writ petition and direct consideration of the case of the Petitioner for promotion with the status that the Petitioner had at the time when Petitioner's juniors were promoted i.e. as at 4th January, 1991. Let such consideration be made as quickly as possible, but not later than three months from the date of service of a copy of this order upon the Respondent No. 2.