
(2011) 12 AHC CK 0250
In the Allahabad High Court

Case No : (S/B 1423/2002) and Review Petition Deffective No. -207 of 2009

Bharat Sanchar Nigam Ltd.Thru C.G.M./Tele & Anr.	APPELLANT
Vs	
Prakash Chandra Rastogi & others	RESPONDENT

Date of Decision : 21-12-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1

Citation : (2011) 12 AHC CK 0250

Hon'ble Judges : Uma Nath Singh, J and Satish Chandra, J

Final Decision : Dismissed

Judgement

Satish Chandra, J.

This Court on 13.01.2009 has passed the following order:

"Heard Sri R.C.Saxena, learned counsel for the petitioner and Sri Yogesh Kesharwani, learned Central Government Counsel for the opposite parties no.2 to 4.

It is admitted case of the parties that the department has finalized a seniority list dated 10.04.2008 during the pendency of the writ petition. Junior to the petitioner Sri V.D.Bakshi has been granted promotion on the post of TES Group "B" w.e.f. 03.06.1994 although the opposite parties have granted notional promotion to the petitioner w.e.f. 21.10.1998.

It is undisputed that the petitioner is senior to Sri V.D.Bakshi to whom promotion was granted w.e.f. 03.06.1994. We, therefore, dispose of the writ petition with a direction to the opposite parties to reconsider the case of the petitioner for the grant of promotion on the post of TES Group "B" with consequential benefits from the date when junior to the petitioner Sri V.D.Bakshi was granted promotion with effect from 03.06.1994 within two months from the date a certified copy of this order is produced."

Against this order, reviewpetitioner went to the Hon"ble Supreme Court in

Special Leave Petition No.333924 of 2009. On 31.07.2009, Hon"ble Supreme Court passed the following order:

"Learned counsel for the petitioners prays that the order of the Division Bench suffers from factual errors inasmuch as it is not an admitted fact of the parties that V.D.Bakshi was junior to Prakash Chandra Rastogi, respondent no.1. He prays that the petition be dismissed as withdrawn with liberty to the petitioners to file a review petition.

The interlocutory application for permission to file special leave petition and special leave petition are, accordingly, dismissed as withdrawn.

We grant thirty days" time to the petitioners to file review application and during that time, the contempt proceedings, which have been initiated, shall remain stayed."

In pursuance of the above order, the present review petition has been filed by the reviewpetitioner i.e. BSNL.

Sri Asit Kumar Chaturvedi, learned counsel for reviewpetitioner submits that there is apparent mistake on the face of the record. He further submits that the opposite party no.1 did not at all take up and appear in either of the departmental qualifying examination or the departmental competitive examination during the year 1988, whereas Sri Vedatiya (V.D.Bakshi) cleared and passed both the departmental qualifying examination and secondly, the Limited Departmental Competitive Examination together in the year 1988 in terms of Telecom Engineering Services (Group B) Recruitment Rules, 1981.

The opposite party No.1, later appeared in departmental qualifying examination in the year of 1991 and qualified the same. Hence, the opposite party was promoted in Telecom Engineering Services (Group B) w.e.f. 21.10.1998 on notional basis through office order dated 07.03.2008. Shri Vedatiya (V.D. Bakshi) was assigned seniority in the final seniority list No. 2 dated 20.03.2001 at S.No. 4963 in the Telecom Engineering Service (Group B), whereas opposite party No. 1 was assigned seniority in Seniority List No. 5 at serial No.15543.1 dated 15.11.2004 through the office memorandum dated 10.04.2008.

Learned counsel also submits that thus Sri Vedatiya (V.D.Bakshi) is senior to opposite party no.1, but this aspect was not considered by this Hon"ble Court and in the impugned order, a direction was wrongly given to reconsider the case of the opposite party for the grant of promotion on the post of TES (GroupB) from the date when junior to him, Sri V.D.Bakshi was granted promotion w.e.f. 03.06.1994. Lastly, he submits that there is apparent mistake from the record.

However, in spite of an opportunity given by the Bench, the learned counsel was unable to produce the composite seniority list. At the same time, he submits that the seniority list of about 34000 TES (GroupB) Officers was issued by the department in seven volumes, but he was unable to show how the opposite party is junior to Sri V.D.Bakshi in the seniority list.

On the other hand, Sri R.C. Sexena, learned counsel for opposite party No. 1 justified the impugned order passed by this Court. He further submits that the department has violated the direction not only of this Court but also given by Hon"ble Supreme Court. He also informs that a Contempt Petition (No.391 of 2011) has already been filed before the Hon"ble Supreme Court, which is still pending.

By considering the rival submissions and on perusal of record, we are of the view that the learned counsel for reviewpetitioner was unable to produce the composite seniority list in spite of opportunity given to him. At the same time, an attempt was made to create confusion regarding the seniority of the opposite party visavis Sri Vedatiya (V.D.Bakshi) by the help of different seniority list.

Moreover, the matter has already reached before the Hon"ble Supreme Court and on 12.05.2008, the Apex Court has passed an interim order in SLP (Civil) No(s) 11339 of 2008. The said order is reproduced as under:

"Issue notice.

Meanwhile, status quo as of today shall be maintained."

Further, in this regard a contempt petition No.391 of 2011 is also pending before the Hon"ble Supreme Court.

Therefore, in the facts and circumstances of the case, we find no reason to interfere with the order in question where this Hon"ble Court has given merely a direction to reconsider the case of the opposite party for promotion from the date when his junior was promoted. There is nothing wrong in this direction. Hence, we are satisfied that there is no apparent mistake on the record.

Needless to mention that the scope of the review is very limited as per the ratio laid down by Hon"ble the Supreme Court in the cases of:

(I) Meera Bhanja v. Nirmala Kumari Chaudhary (1995) 1 SCC 170; and

(II) Parsion Devi & others v. Sumitri Devi (1997) 8 SCC 175

It may also be mentioned that Order 47 Rule 1 of the CPC prescribed that an application for review of judgment can be filed only after discovery of new and important matter or evidence which after the exercise of due diligence, was not within his knowledge or could not be produced at the time when the order was passed. But in the instant case, it is not the case as there is no mistake or error apparent on the face of the record. So, the review petition has no merit and is not maintainable.

In view of above, the review petition has no merit and the same is dismissed.