
(1998) 07 AHC CK 0076

In the Allahabad High Court

Case No : C.M.W.P. No's. 12900 and 24736 of 1996

Brig. R.N. Srivastava

APPELLANT

Vs

Survey of India and others

RESPONDENT

Date of Decision : 30-07-1998

Acts Referred:

Constitution of India, 1950 — Article 14, 15, 16

Citation : (1999) 1 AWC 38 : (1998) 3 UPLBEC 1748

Hon'ble Judges : S.H.A. Raza, J; Bhagwan Din, J

Bench : Division Bench

Advocate : Sudhir Agarwal and S.C. Budhwar, for the Appellant; S.C. and U.N. Sharma, for the Respondent

Final Decision : Disposed Of

Judgement

S.H.A. Raza, J.—By means of the Writ Petition No. 12900 of 1996 the petitioner Brig. R. N. Srivastava prays for a writ, order or direction in the nature of mandamus directing the respondents to consider the petitioner for promotion in Senior Administrative Grade to the post of Additional Director General, Survey of India in accordance with Rules and also grant the petitioner all the consequential benefits since his juniors have been promoted and also quash the impugned order dated 29.3.1996 whereby the representation of the petitioner regarding supernumerary promotion to the post of Senior Administrative Grade has been rejected by the respondents.

2. By means of Writ Petition No. 24736 of 1996 the petitioner, Brig. M. K. Jain prays for a writ, order or direction in the nature of mandamus directing the respondents to review the earlier D.P.C. conducted for 1993 vacancies within a specified period and to consider the petitioner for promotion in the senior administrative grade to the post of Additional Surveyor General in accordance with Rules and also grant the petitioner all consequential benefits from the date his erstwhile Junior Sori Gulab Choudhary has been promoted.

3. Since in both the above-mentioned writ petitions, the question, facts and law involved are common, thus, the same are being disposed of by a common judgment. However, Writ Petition No. 12900 of 1996 shall be the leading case.

4. In the year 1962, Brig. R. N. Srivastava, the petitioner was commissioned in the Engineering Corps of the Indian Army, He opted for the Survey of India where he joined in the year 1968 as Deputy Superintendent and he was promoted as Superintendent in the year 1974 and on 26.6.1993 he was promoted as Deputy Director. On 1.8.1987 he was given selection grade.

5. Brig. M. K. Jain was commissioned permanently in the Army the Corps of Engineers with ante-dated seniority from 1.7.1963 and seconded to survey of India department in July, 1967 in accordance with the then existing recruitment rules, i.e., Survey of India (Recruitment from Corps of Engineers Officers) Rules, 1950.

6. The Government of India has framed Rules and Regulations known as Survey of India (Recruitment from Corps of Engineering) Rules. 1950. According to the said Rules, there were two sources of recruitment, namely, one from the Army and the other from the civilian officers serving in Survey of India. After induction into service, a combined seniority list was prepared for the purposes of further promotion and other benefits. In the said seniority list the petitioner, Brig. R. N. Srivastava is shown at serial No. 4. Shri S. K. Basu and Shri Gulab Chandra Choudhary are shown at serial Nos. 5 and 17 respectively, while Brig. M. K. Jain stands at serial No. 7, having his year of allotment as 1.7.1963. Hence, Brig. M. K. Jain is senior to Shri Gulab Choudhary and Brig. R. N. Srivastava is senior to both of them, who were from the civilian cadre in the Survey of India.

7. The validity of 1950 Rules was challenged before the Hon"ble Supreme Court in a case in AIR 1980 SC 458, which held to be valid.

8. In the year 1989, new set of Rules, i.e., Survey of India (Group A) Service Rules, 1989 were promulgated and the army and civilian cadre were bifurcated and the two streams, viz., defence and civil were assigned fixed quota of vacancies for the two separate streams in each grade to provide for the promotional avenues. As separate provision of vacancies would have disturbed the promotional avenues of officers in existing integrated seniority list, the interest of such officers who were to be adversely affected by application of 1989 Rules, was protected by providing a safeguard by inducting Rule A (3), which is reproduced below :

"A (3) Safeguard of the existing incumbents in the combined seniority lists.--The present incumbents (Defence/ Civil) who are adversely affected on account of the bifurcation will be protected by the following provisions :

(a) All those officers (Defence/Civil), who would have got promotion on the basis of the integrated seniority but who got left out on account of separate seniority, would be covered by creating supernumerary posts (and in addition by granting

equivalent acting/ substantive army ranks in case of Defence Officers).

(b) There is no wide disparity between the existing officers in the two streams for promotion to a particular level, i.e., the difference in the year of allotment/ seniority of the junior-most, officers or comparison at each level is not more than one year. However, if there is any case of wide disparity the affected officer(s) would be covered by creating supernumerary posts (and in addition by granting equivalent acting/substantive army ranks in case of defence officers).

(c) Other affected Defence Officer(s) who get superseded by junior civilian officers in the combined list but are otherwise fit for promotion not covered under (a) and (b) above will be granted local rank equivalent to the post occupied by junior civilian officers. This could not entitle them to any rank pay or other allowances of supernumerary local rank."

9. In accordance with 1989 Rules, the seniority list of officers working in the non-functional selection grade Director/Deputy Director (selection grade] in civil and defence streams was prepared and Circulated vide order dated 7.2.1994.

10. In the year 1993, three vacancies in senior administrative grade occurred for which the officers working in the Director/Deputy Director (selection grade) constituted the feeder cadre. Out of the said three vacancies, one was allotted to defence stream and two were allotted to the Civilian stream. Against these vacancies Brig. L. M. Beotra from the defence stream and S/Shri S. K. Basu and Gulab Choudhary were promoted by order dated 26th October, 1995. No promotion by grant of supernumerary post to the erstwhile senior officers in the combined list as provided under Clause A (3) of the Rules was provided.

11. According to the petitioner, the safeguard clause contemplated in 1989 Rules by the Departmental Promotion Committee was bad and the decision which was taken was contrary to Rules, because the Departmental Promotion Committee did not consider the erstwhile combined seniority list of the officers in the feeder cadre for the grant of supernumerary promotion.

12. As stated above, in the above seniority list the petitioner, Brig. R. N. Srivastava was shown at serial No. 4, while the petitioner. Brig. M. K. Jain stood at serial No. 7, having his year of allotment as 1.7.1963. Shri Gulab Choudhary, whose year of allotment was 14.4.1964 was shown at serial No. 17 of the combined seniority list. In view of the promotion being granted against separate vacancies in both the streams by the Departmental Promotion Committee, the petitioner. Brig. R. N. Srivastava was senior to Brig. S. K. Basu and Brig. Gulab Choudhary. while the petitioner. Brig. M. K. Jain was senior to Brig. Gulab Choudhary, who was from the civilian cadre from the Survey of India.

13. As the respondent No. 1 did not give promotion to the petitioners by creating the supernumerary promotion as envisaged in Clause A (3) of 1989 Rules, the petitioners represented to the Secretary to the Government of India, Ministry of Defence, but their representations were rejected only by indicating that it has

not been found possible to accede to the request.

14. In writ petition bearing No. 11830 of 1989, which was filed by some of the army officers, in re : Major S. Ravi and others v. Government of India and others, in the High Court of Andhra Pradesh, a counter-affidavit was filed by the Government of India on 11.12.1989 and in para 8 of the said counter-affidavit, it was clearly stated by the respondents that adequate provisions have been kept in the rule against any supersession by making provision for promotion by creating supernumerary posts. It has been further averred that any possible supersession by an officer of the other stream, owing to the present bifurcation, will be nullified by creation of supernumerary post of the required and unlimited number.

15. Another affidavit in the same Writ Petition No. 11830 of 1989 was also filed on 9.3.1993, wherein similar averments were made by the respondents in paragraphs 6, 8 and 9 of the counter-affidavit.

16. On the basis of the said averments, the Andhra Pradesh High Court found no constitutional infirmity in 1989 Rules and while dismissing the writ petition observed :

"The fact that this writ petition is dismissed does not mean that the issue raised by the petitioners is irretrievably buried. The lapse of time which naturally brings in its wake new events and exigencies would tell whether the novel experiment undertaken by the Government of India has met with success or whether the Rules have to be further trimmed or moulded. Just as the Government of India thought of framing a new set of Rules though the old Rules were upheld by the Supreme Court to remove the simmering discontentment amongst the civilian officers. I do hope that the Government will take stock of the situation from time to time and make necessary adjustments if in due course it is found that the operation of the Rules has resulted in unintended disadvantages to the army officers. It must be borne in mind, in deference to the observations of the Supreme Court, that the presence of Army Officers in Survey of India is an essential requirement and the genuine grievance of this important wing need to be tackled promptly. In fact, the Central Government plainly stated in the counter-affidavit that in the Rules themselves, adequate powers are reserved to the Government to remedy the injustice that might come to its notice. I also feel that the supernumerary promotions could be made more purposeful and clear cut. Perhaps, the issuance of guidelines and supplementary instructions in this regard is a desideratum and the minimum could be done."

17. It was contended that by not granting supernumerary promotions to the petitioners, the respondents acted contrary to the existing provision of safeguard in the 1989 Rules and have also acted contrary to the directions given by the Andhra Pradesh High Court.

18. It was submitted that the present seniority list of the officers placed in the senior administrative grade as a result of the said Departmental Promotion

Committee is arbitrary and discriminatory as it leaves out the name of the petitioners for consideration for promotion to the next higher grade in Survey of India along with the officers, who were juniors to them in the erstwhile seniority list.

19. In the counter-affidavit filed on behalf of the Union of India, it was contended that the petitioners were considered ineligible for grant of promotions to the next higher grade against the vacancies for the year 1994-95 under the safeguard provision contained in Rule 1989 since officers had received one promotion from the grade of Deputy Director (Rs. 3,700-5,000) to the N.F.S.G. grade (Rs. 4,500-5,700) after the promulgation of 1989 Rules. It was contended that the safeguard provided in 1989 Rules after the bifurcation of the service in Survey of India is applicable to the officers only once and as the petitioners have received one promotion from the grade of Deputy Director to N.F.S.G. grade on 26.9.1991. they are not entitled for further promotion.

20. It was also submitted that all the officers in the zone of consideration for the vacancies for the year 1994-95 had already received one promotion after promulgation of 1989 Rules and, therefore, promotion to S.A.G. grade would not attract the safeguard provision available under 1989 Rules insofar as the petitioners are concerned. It was submitted that after receiving the promotion to a higher post of N.F.S.G. by means of the order issued in the year 1991, there is no relevance of a combined seniority list in the said grade from which promotion is considered to the S.A.G. grade of Additional Surveyor General, i.e., from the grade of N.F.S.G. (Rs. 4,500-5,700) to S.A.G. (Rs. 5,900-6,700), as there is no provision for a combined seniority list of defence and civil streams in new grade to which the officers were appointed in 1991 after the promulgation of 1989 Recruitment Rules.

21. It was vehemently argued by Shri U. N. Sharma. Senior Standing Counsel, appearing on behalf of the Union of India that if the Integrated seniority list, prior to bifurcation of the service into separate streams (Defence and Civil) is taken into consideration on each subsequent promotion, it would result in perpetuating supernumerary appointment, thereby exceeding the sanctioned strength in each such grade by the number of supernumerary promotions ordered, which may lead to administrative problems.

22. Thus, the case of the respondents appears to be is that integrated seniority list between the officers of defence and civilian streams ceased to exist after the petitioner's promotion to the N.F.S.G.. grade after promulgation of the 1989 Rules. In 1990, the relevance of integrated seniority list for purpose of promotion of the petitioners from the N.F.S.G. grade to S.A.G. grade has similarly come to an end. There is no reckoning of seniority inter se between Civilian and Military Officers for the purpose of promotion to the post of Additional Surveyor General for the vacancies of 1994-95 and the petitioners cannot labour on this point since each of the streams has got its own posts and vacancies earmarked for it.

23. It is pertinent to mention here that it has been conceded in paragraph 10 of the counter-affidavit that persons junior to the petitioners have been promoted on the posts of Additional Surveyor General in Survey of India, which is evident from the following averments :

"Thus, no discrimination has been meted out to the petitioners by denying supernumerary promotion to the posts of Additional Surveyor General in Survey of India, vis-a-vis their counter-part in the civilian stream even though the later may have been junior to the petitioner in the erstwhile seniority of Deputy Director (Rs. 3,700-5,000) existing prior to the promulgation of the N.F.S.G, grade (Rs. 4,500-5,700) after the promulgation of new Rules."

24. It was further averred that action of the respondents in denying the promotion to the senior administrative grade is not contrary to the Rules and the same is not violative of Articles 14 and 15 of the Constitution of India.

25. The contention of the respondents is that the benefit of Rule 1A (3) can only be given one time and the petitioners have been given the benefit in the year 1990 in the non-functional selection grade. The argument is mis-concieved. The Rule came into existence in the year 1989. The vacancy in the non-functional selection grade was of 1987. The petitioners were given the benefit in non-functional grade of the 1987 in the year 1990. The 1989 Rules were not of retrospective character. The plea of granting only once the benefit of Rule A (3) is also otherwise not correct because in Andhra Pradesh High Court, the Writ Petition No. 11830 of 1989 was filed by Civil/Army Officers including the petitioners on the plea that the Rules would deprive of the petitioners of civilian grade in the Army.

26. We are of the view that the respondents have neither followed the mandate of Rule A (3) of 1989 Rules nor the directions of Andhra Pradesh High Court. They also acted contrary to the Articles 14 and 16 of the Constitution. Admittedly the post of Additional Surveyor General is a post of higher grade, i.e., 5.900-6.700 in comparison to N.F.S.C. grade (Rs. 4,500-5,700). There is no denial of the fact that in the combined seniority list as existed prior to promulgation of Rules 1989. the petitioner, Brig. R. N. Srivastava was senior to Brig. S. K. Basu and Brig. Gulab Choudhary, while the petitioner, Brig. M. K. Jain was senior to Brig. Gulab Choudhary. They were promoted on the posts of Additional Surveyor General. The writ petition filed by some of the Army officers including the petitioners was dismissed by the Andhra Pradesh High Court for the reason that the respondents have assured the Court by filing a counter-affidavit that 1989 Rules envisaged against any supersession by making provision for promotion by creating supernumerary posts and any possible supersession by an officer of the other stream, owing to the bifurcation of Army and Civil Cadre will be nullified by creation of supernumerary posts of the required and unlimited number. Admittedly, the petitioners have been superseded by two juniors, but the supernumerary posts were not created to remove the anomaly. The Andhra Pradesh High Court had observed that if the Rules would result in unintended

disadvantage to the Army Officers, the supernumerary promotions could be made more purposeful and clear cut.

27. It was never the case of the respondents before the Andhra Pradesh High Court that owing to the bifurcation of the cadre if a person belonging to civilian stream is given some higher grade, he can be superseded by his juniors. The Andhra Pradesh High Court was assured by means of the counter-affidavit that if owing to bifurcation, there would be any possible supersession by an officer of the other stream, supernumerary posts of the required and unlimited number could be created, but that was not done. The Andhra Pradesh High Court was very clear that if the Rules would result into unintended disadvantage to the Army Officers, the genuine grievance of this important wing needs to be tackled promptly and whenever any injustice would come to the notice of the Government, the adequate powers which are reserved to the Government would be taken into consideration.

28. In view of the fact that gross discrimination has been meted out to the petitioners and the persons junior to them have been promoted in senior administrative grade, this writ petition deserves to be allowed.

29. In view of what we have indicated hereinabove, the writ petition succeeds and is accordingly allowed. A writ in the nature of mandamus is issued commanding the respondents to consider the petitioners of both the writ petitions for promotion in senior administrative grade, i.e., to the post of Additional Surveyor General in accordance with 1989 Rules as well as the observations of this Court mentioned hereinabove, from the date their juniors have been promoted, with all consequential benefits and grant them equivalent army right expeditiously, say within three months from the date of receipt of a certified copy of this order.