

(2006) 02 DEL CK 0153
In the Delhi High Court
Case No : LPA No. 1682 of 2005

Bureau of Indian Standards (BIS)

APPELLANT

Vs

R.P. Singh

RESPONDENT

Date of Decision : 06-02-2006

Acts Referred:

Bureau of Indian Standards (Recruitment to Scientific Cadre) Regulations, 1988 —
Regulation 9, 9(2), 9(3)
Bureau of Indian Standards Act, 1986 — Section 38

Citation : (2006) 02 DEL CK 0153

Hon'ble Judges : Markandeya Katju, C.J.; S. Ravindra Bhat, J

Bench : Division Bench

Advocate : B.K. Sood and D. Laji, in LPA Nos. 1682, 1683 and 1684/2005 and B.K. Sood, in LPA No. 1689/200, for the Appellant; J.P. Sengh, for the Respondent

Final Decision : Dismissed

Judgement

S. Ravindra Bhat, J.—These appeals under letters patent are directed against the judgment and order of a learned single judge, dated 31-5-2005 in WP Nos. 6372-73; 6376 and 6382 of 2003.

2. The respondents had claimed for directions to the appellant (Bureau of Indian Standards, hereafter "BIS") to promote them as Scientists-D in the pay- scale of Rs. 12,000-375-16,500/- on the date of their completion of 5 years of service in the lower grade, under a scheme known as the Flexible Complementing Scheme (hereinafter referred to as 'the Scheme').

3. The bids is governed by statutory regulations. The relevant provision, viz Regulation 9 of Bureau of Indian Standards (Recruitment to Scientific Cadre) Regulation, 1988, read as follows:

9. Promotion to the Posts up to System Scientist-E [Director (selection Grade)]

(1) The selection for promotions shall be made from amongst the scientific cadre officers serving in the next lower grade by the standing staff committee of

Selection Committee `A" as the case may be, on the recommendations of the Assessment Committee appointed by the Director General under sub-regulation (3). Selection of officers for promotion shall be made on the basis of assessment procedure as laid down by the Executive Committee which shall take into account qualifications performance, merit, seniority, potential, annual confidential reports for previous five years and interview.

(2) The promotion of Selected officers to next higher grade up to the System Scientist-E shall be made in the same manner as laid down in the Scheme of Flexible Complementing formulated from time to time by the Department of Science and Technology for promotion of Scientists in scientific organizations under the Central Government and shall be effective from the date of eligibility.

4. The bids adopted recommendations of the Fifth Central Pay Commission, with effect from 1-1-1996, and implemented the scheme. The scheme contemplated promotion, after completion of certain prescribed periods of service, in relation to each post (known as the "residency period"). These pertained not only to posts, but also to scales of pay. The relevant residency periods, were as follows:

-----				Scales of Designation		
Minimum	Residency	Pay	period	linked to	performance	
-----				a) Rs. 8000-13500	Scientist B	
3 years	b) Rs. 10000-15200	Scientist C	4 years	c) Rs. 12000-16500	Scientist D	4
years	d) Rs. 14300-18300	Scientist E	5			years

5. The respondents were in the pay-scale of Rs. 10,000-15,200/-, and working as Scientist-C, with effect from 10.3.1994 and were to have been promoted to Scientist -D, after five years in 1999. The promotions were granted only in March, 2003, with effect from March, 2001. The delay was attributed, by the BIS, to a contemplated change in the Service Regulations. Changes were introduced to the Scheme by an Office Memorandum dated 9th November, 1998 which modified the eligibility for benefits of the Scheme linked to the Annual Confidential Reports of the person concerned. Regulation 9 was amended by notification dated 3rd May, 2002, in exercise of the powers conferred by Section 38 of the Bureau of Indian Standards Act, 1986 to read as follows:

9. Promotion to the Posts up to Scientist-G -(1) The selection for promotions shall be made from amongst the Scientific Cadre officers serving in the next lower grade by the Assessment Committee appointed by the Director General under sub-regulation (2) Selection of officers for promotion shall be made in the same manner as laid down in the Scheme of Flexible Complementing formulated from time to time by the Central Government for promotion of scientists in Scientific Organizations under the Central Government and shall be effective from the date of eligibility. The Scheme of Flexible Complementing as formulated by the Central Government vide OM No. 2/41/PIC-97 dated the 9th November, 1998 would be effective for Scientific Cadre Officers up to and inclusive of the

level of Scientific-E from 9th November, 1998 and for the levels of Scientist-F and Scientist-G, the date of promotion would be effective from the date of Gazette Notification of this revised regulation.

6. The rationale for the amendment was spelt out in the Explanatory Memorandum to the notification, which stated, inter alia, that:

The Scheme of Flexible Complementing (FCS) was earlier introduced based on the guidelines issued by the Department of Science and Technology (DST) in November, 1983 for all Scientific and Technical Organizations/Institutions of the Government of India, which was later modified vide Department of Science and Technology's OM No. A.42014/2/86-Admn.1(A) dated the 28th May, 1986. According to this scheme, the promotion of an officer in scientific service from one grade to the next higher grade would take place after a prescribed period of five years residency service on the basis of assessment procedure as laid down by individual organization. Promotions made under this scheme would be in-situ and with effect from the date of their eligibility as per the residency period and personal to the officer concerned irrespective of the occurrence of the vacancy in the higher grade. Accordingly, in Bureau of Indian Standards, all Scientific Cadre Officers were considered eligible for promotion from one grade to the next higher grade after they had put in 5 years of residency service in that grade. Thereafter, based on the assessment procedure as laid down by the Executive Committee of Bureau of Indian Standards, which shall take into account qualifications, performance, merit, seniority, potential, annual confidential reports for previous five years and interview by the Assessment Committee appointed by the Director General, the officers would be promoted to the next higher grade as per their date of eligibility.

7. The respondents had approached the court, complaining that the bids acted arbitrarily, in withholding promotions to them to the cadre of Scientist D, from the date of their eligibility; instead of the promotion rightfully due to them in 1999, they were given the benefit in 2001. During the pendency of their writ petitions, another notification was issued on 12-8-2004, and published in the Gazette of India. By this notification Regulation 9 was once again amended. The Explanatory Memorandum clarified the purpose behind the change. It stated that bids Regulations, 2002 adopted the Scheme formulated by the Central Government and its benefits were to be given to employees with effect from 9th November, 1998. It was, felt that the bids did not possess powers to implement the Scheme retrospectively. The policy of the Central Government was that the Scheme should apply to the Scientific Cadre Officers of the bids only prospectively. Therefore, the Notification was issued to rectify a mistake. Regulation 9, as amended, in 2004, read as follows:

9. Promotion to the Posts up to Scientist-G `` (1) The selection for promotions shall be made from amongst the Scientific Cadre officers serving in the next lower grade by the Assessment Committee appointed by the Director General under sub-regulation (2) Selection of officers for promotion shall be made in the

same manner as laid down in the Scheme of Flexible Complementing formulated from time to time by the Central Government for promotion of scientists in Scientific Organizations under the Central Government subject to the condition that the said Scheme shall be applicable to the Scientific Cadre Officers of the Bureau from the date of commencement of the Bureau of Indian Standards (Recruitment of Scientific Cadre) Amendment Regulations, 2004.

8. The original writ petitioners had also urged that other employees, viz Shri H.J.S. Pasricha, Smt. D.G. dustydar, Shri G. Bhaskar, Shri Bijender Kumar Jain, Shri Jayanta Roy Chowdhury and Smt. Mala Ayyappan, had been given the benefit of automatic 'promotion' to Class-D in December, 1998 although by that time the proposed changes had already been effected.

9. The learned single judge allowed the writ petitions of the respondents, relying upon the decisions of the Supreme Court, reported as *State of Andhra Pradesh and Ors. v. Sreenivasa Rao and Ors.* 1993 (3) SCC 285 ; *P. Mahendran and others Vs. State of Karnataka and others*, *P. Murugesan and Others Vs. State of Tamil Nadu and Others*, ; and a decision of this court, in CW No. 4555/2001 entitled *Mr. N.C. Jain and Ors v. New Delhi Municipal Council and Ors.* decided on September 16, 2003. He rejected the contention of the Appellant bids that by virtue of the amendments, particularly of 2004, it was no longer possible to grant benefit of retrospective promotion to any official or employee.

10. The learned single judge held as follows:

In 1999 the Petitioners had become entitled to 'promotion' to Group-D and at that time Rules to the contrary did not exist. The then prevailing FCS ought to have Therefore been implemented in 1999 itself, and had this been so done the Petitioners would have been promoted to Group-D after the expiry of five years service in Group-C. It should also not be overlooked that the effect of the Notification of 12th August, 2004 was to return to the regime which entitled the Petitioner to automatic progression to Group-D on their completing five years in Group-C.

11. In these circumstances, the Writ Petitions are allowed and the Respondents are directed to promote the Petitioners to the post of Scientist-D in the pay-scale of Rs. 12,000-375-16,500/- as soon as each of the Petitioners had rendered five years service in the post of Scientist-C as per the Flexible Complementing Scheme applicable on the said date.

11. Mr. B.K. Sood, learned counsel for the appellant submitted that the impugned judgment is in error, as it overlooks the clear policy formulation of the bids that promotions could not be given with effect from an anterior date. Though the scheme as it stood originally, supported the grant of ante dated promotion, from the date of the incumbent's eligibility, nevertheless, the amendments had brought about two important changes.

12. The counsel urged that by virtue of the amendments, particularly of 2004, it

was no longer possible to grant benefit of retrospective promotion to any official or employee, as on the date of his acquiring eligibility, i.e after completing the requisite "residency period" in the feeder post. It was also contended that the promotions were not granted promotion to await amendment to the rules, which took place subsequently. The scheme stood altered, since it was extended to two other posts, and in addition to fulfilling the "residency requirement" the incumbent's ACRs also had to be assessed, before granting promotion. Mr. Sood placed reliance on the Explanatory Statement annexed to the two notifications, to say that the intention of bids was not to grant retrospective promotion, and that if the court were to grant it, the objective of the amendment would be defeated.

13. The scheme as it originally stood, assimilated the flexible complementing scheme as applicable in the Central Government. The change brought about in 1998 pertained to linkage of promotion, not only with residency periods, but also assessment on the basis of ACRs. The amendment in the Rules, made effective from 2002, was to extend the scheme to the post of Scientist F and Scientist G. The only material change, as far as the petitioners were concerned, was the insistence on assessment, as an essential condition, in addition to the eligibility or residency period in the feeder cadre. All the petitioners were in the grade of Scientist C, and were awaiting promotions to Scientist D.

14. The impugned judgment is premised upon the reasoning that the promotion of the petitioners as Scientist D were to be regulated in accordance with the Rules and conditions, as existing in 1999, when the right to be promoted, and given effect from the date of their eligibility, fell due. The learned single judge relied upon a line of decisions of the Supreme Court in Rangaiah, P. Mahendran, P. Murugesan, etc, to hold that promotions to existing vacancies are to be in accordance with rules existing on the date when the right to be considered arose.

15. We see no infirmity in the approach or reasoning of the learned single judge. The amendment introduced in 2004, for the first time sought to introduce a bar against retrospective promotions, i.e from the date the eligibility conditions of the official aspiring for promotion, were fulfilled. Before the amendment, no such prohibition or condition existed. The amendment is not retrospective in its operation.

16. There is yet another consideration which impels us to affirm the judgment under appeal. Though termed "retrospective" the promotion under the previous scheme, as modified in 1996, and amended in 1998 and 2002, created an entitlement in favor of the official in a feeder cadre to be promoted from the date he fulfilled the eligibility condition. This is evident from the 9th November 1998 notification, and the amendment to Regulation 9, effected in 2002. The limiting condition of the date of promotion being after the date of publication of the notification, was in respect of promotions above the level of Scientist E; the rationale for this was merely that the post was included in the scheme for the first time, on 3-5-2002. Seen from this perspective, the right to be considered

and granted "in situ" promotion to the petitioners, from the date(s) they acquired eligibility after completion of residency period, did not stand altered. The prohibition imported by way of the 2004, admittedly made prospective, could not take away their right to be dealt with as on the date they became eligible to be promoted, which indeed was the date when the promotion was to be effective. This is supported by two circumstances: one, the appellants themselves promoted the respondents in 2003, admittedly with effect from anterior dates, in 2002. Two, the explanatory memorandum to the notification dated 3-5-2002 itself states that:

Promotions made under this scheme would be in-situ and with effect from the date of their eligibility as per the residency period and personal to the officer concerned irrespective of the occurrence of the vacancy in the higher grade.

There is no dispute that when the promotions were given, in March 2003, with effect from March 2001, the amendment of 2004 was not in existence; Therefore there was no impediment in promoting the respondents from the date of their eligibility.

17. In view of the above reasons, we find no merit in these appeals, which are accordingly dismissed with no order as to costs.