
(2011) 01 DEL CK 0496

In the Delhi High Court

Case No : Writ Petition (C) No. 15920 of 2006

C. Gopala Krishna

APPELLANT

Vs

Bureau of Indian Standards and Others

RESPONDENT

Date of Decision : 06-01-2011

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2011) 01 DEL CK 0496

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

**Advocate : J.P. Sengh, Sumit Batra and Gaurav Bhardwaj, for the Appellant;
B.K. Sood and Vipul Sharda, for the Respondent**

Final Decision : Dismissed

Judgement

Valmiki J Mehta, J.—The Petitioner, who is working as a Scientist with the Respondent No. 1, has filed this writ petition under Article 226 of the Constitution of India, challenging the action of the Respondent No. 1 in denying him the promotion from the post of Scientist E to Scientist F.

2. The admitted case of the parties is that promotion takes place on the basis of criteria for considering promotions under a scheme titled as

Criteria for considering promotions under flexible complementing scheme". This scheme reads as under: "CRITERIA FOR CONSIDERING PROMOTIONS UNDER FLEXIBLE COMPLEMENTING SCHEME

(a) All officers will be first screened on the basis of gradings in the Annual Confidential Reports (AC Rs) for consideration for promotion; the AC Rs should be assessed on a 10 point scale giving 10 marks for "outstanding", 8 marks for "very good", 6 marks for "good", 4 marks for "average" and 0 for "poor" and only those officers who satisfy the minimum residency period linked to their performance as indicated in the table below be screened in.

Number of years in the grade

3

4

5

6

7

8

Minimum percentage for eligibility

Scientist B to Scientist C

90%

80%

70%

65%

60%

Scientist C to Scientist D

90%

80%

75%

70%

60%

Scientist D to Scientist E

90%

80%

75%

70%

60%

Scientist E to Scientist F

90%

80%

75%

70%

Scientist F to Scientist G

90%

80%

75%

70%

Exceptionally meritorious candidates with all outstanding gradings may be granted relaxation in the residency period, the relaxation being not more than one year on any single occasion. Such a relaxation will be limited to a maximum of two occasions in their entire career.

(b) As the procedure adopted for assessment of C Rs in various Scientific Departments differ at present, it has been decided that an external member, from Department of Atomic Energy, Space or DRDO who have developed over the years a fine tuned system of screening in meritorious Scientists maybe co-opted in the selection process, till such time a system gets established in other Scientific Departments. The position will, however, be revised after 5 years from the date of issue of this Office Memorandum.

(c) All Officers who are screened-in will be called for an interview. The performance in the interview will also be graded similarly on a 10 point scale and the eligibility for promotion will be based on the same norms as in the above Table.

(d) Field experience in research and development and or experience in implementation of such scientific projects in compulsory for promotion of scientists recruited to the posts in the Secretariat of the Scientific Ministries/ Departments to higher grades under FCS. Field experience of at least 2 years and 5 years respectively will be essential for promotion to Scientist F and Scientist G grades respectively. However, during the transitional period, Committee may relax this requirement in case of meritorious candidate."

3. A reference to the above scheme shows that promotion takes place on

compliance of two requirements. The first is getting of a minimum number of marks on the basis of the AC Rs linked with the residency period and the second requirement is of appearing before an Interview Board which gives marks on a 10 point scale. The marking in the interview and promotion consequently will be based on the same norms as in the table giving the percentage of marks on the basis of AC Rs linked with the residency period.

4. Interviews in the present case were held by the Respondent No. 1 on 26.6.2003 and the Petitioner was not promoted because though he had been brought into the zone of consideration on the basis of seven years residency period requiring 75% marks, he only obtained 70% marks in the interview.

5. The contention of the learned senior counsel for the Petitioner is that the interpretation of Clause (c) of the flexible complementing scheme as given by the Respondent No. 1 is flawed because once the Petitioner got 70% marks and which was good enough for promotion of a Scientist who had completed an eight years residency period then there was no reason to deny promotion to the Petitioner who in the meanwhile before appearing before the Interview Board had completed eight years residency period though he was called for the interview on the seven year residency period basis.

6. I am not able to agree with the contentions as raised by the learned senior counsel for the Petitioner for the following reasons:

(1) Firstly, the scheme with its para (c) has been uniformly applied by the Respondent No. 1 to all the persons and consequently it is not as if the Respondent No. 1 has caused discrimination to the Petitioner by selective application of the scheme.

(3) Thirdly, in my opinion, there is nothing illegal or arbitrary in the Respondents interpreting Clause (c) of the scheme by holding that in interview also the marks which are obtained must necessarily be at least that percentage of marks as are required in the correlated residency period on the basis of which a candidate is called for the interview. This Court cannot substitute its interpretation for the interpretation as is done by the Respondent No. 1/Departmental Promotion Committee inasmuch as if two views are possible, unless the view of the Department results in gross absurdity, this Court will not substitute its interpretation/opinion for that of the Department, more so when the scheme has been consistently applied. In my opinion there is nothing wrong in requiring a person having lesser number of years of residency to have higher proportionate marks on a 10 point scale in the interview for being granted promotion because after all it is a scheme for accelerated promotion and therefore requiring a higher percentage of marks on the 10 point scale in the interview for residency period is surely not an arbitrary requirement because as already stated it gives accelerated promotions to persons with lesser residency period.

7. In view of the above, I do not find any merit in the petition which is therefore dismissed, leaving the parties to bear their own costs.