
(1999) 12 DEL CK 0071
In the Delhi High Court
Case No : C.W.P. No. 3644/96

Chandra Sekhar Sen

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 24-12-1999

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2000) 3 AD 746 : (2000) 52 DRJ 743

Hon'ble Judges : A.K. Sikri, J

Bench : Single Bench

Advocate : Mr. R.L. Dhawan, for the Appellant; Mr. B.K. Sood, for the Respondent

Judgement

A.K. Sikri, J.—Petitioner is an employee of Bureau of Indian Standards (earlier known as Indian Standard Institution). He joined the Bureau on 11.1.74 as Asstt. Director (Printing-cum-Production). He was promoted as Deputy Director on 30.5.1985. He is holding the post of Director (Admn.) on ad hoc basis, to which post he was promoted vide Memorandum dated 3.9.1993. He is aspiring to become Director (Admn.) on regular basis. Controversy revolves round his eligibility to be considered for this post. To appreciate this controversy, let us first scan through relevant facts in little detail and the background under which this controversy has arisen.

2. In the year 1986, Bureau of Indian Standard (BIS in short) was established by enacting Bureau of Indian, Standards Act, 1986. All the employees of erstwhile Indian Standards Institution came under the administrative control of BIS. Thereafter Executive Committee of the BIS, with previous approval of the Central Government, and in exercise of power conferred under Sec. 38 of the bids Act, 1986 made Regulation called the Bureau of Indian Standards (Recruitment to Administration, Finance and Other Post) Regulation, 1988 (hereinafter called the Regulation of 1988) which were notified vide Notification dated 15.1.1988. Some amendments were made in these Regulations vide Notification dated 22.8.1990 (hereinafter referred to as Amended Regulations, 1990). As per the amended

Regulation, the Educational and other qualifications required for the post of Director (Admn.) by way of Direct Recruitment were as under:-

"A degree of a recognized University; 10 years experience in Office Management, Stores Purchase, General Services in a Govt. Semi-Govt. or reputed large organization of which 5 years shall be in a senior position; thorough knowledge of Government of India Rules pertaining to office management, stores purchase, etc.; experience in staff welfare activities and building maintenance."

In case of recruitment by promotion/reputation grades from which promotion/deputation to be made, the eligibility was prescribed as under:-

"Deputy Director with five years service in the grade possessing a degree in Arts or Science."

Thus in terms of the Amended Regulation 1990 the post of Director (Admn.) was to be filled up by promotion through selection of Deputy Director with 5 years service in the grade possessing Degree in Art and Science. Moreover, while in Regulation, 1988 Deputy Secretary (redesignated as Dy. Director) working in Administration and Finance Groups were alone eligible for appointment to this post under the Amended Regulation, 1990, the words "A&F" were omitted on the basis of which petitioner claims that all Deputy Directors working in all categories became eligible to be considered for this post. Incidentally, the petitioner belongs to group of Technical Supportive Service (TSS).

3. In 1992, one Shri B.G. Shankara Rao was working as Director (Admn.) on regular post. In September, 1992, he went on deputation to Kendriya Vidyalaya Sangathan. At that time this post was admittedly manned by an officer of Scientific Cadre as nobody was eligible for promotion as Director (Admn.) from within the Department. However, petitioner acquired the qualification of Graduation in April, 1993. Thereafter vide Memo dated 3.9.1993, he was promoted to the post of Director (Admn.) on ad hoc basis. Paragraph 2 of this Memo reads as under :-

"2. His promotion to the post of Director (Administration) is purely on ad hoc basis and it will not confer any right for regular promotion."

It is clear that petitioner was given ad hoc promotion as the post had fallen vacant temporarily due to the fact that Mr. B. G. Shankara Rao held this post on substantive basis had gone on deputation to Kendriya Vidyalaya Sangathan. Shri Shankara Rao reverted back to bids after completion of his deputation period and took over as Director (Finance) with effect from 1.1.96 and a Memo dated 1.1.1996 was issued to this effect. On Shri Shankara Rao joining as Director (Finance) , petitioner made representation dated 27.2.1996 stating that now a clear vacancy existed for the post of Director (Administration), he should be made permanent in the post of Director (Administration).

4. It may be stated at this stage that vide Notification dated 14.1.1994 there was further amendment to Regulation, 1988 for the post of Director (Admn.).

Amendment Regulation 1994, however, does not make any change into far as controversy in the present case is concerned.

5. However, as the request of the petitioner to appoint him on regular basis was not acceded to, petitioner filed the instant petition claiming his regularisation as Director (Admn.). In fact, he became apprehensive because of Executive Committee meeting of bids held on 11.7.1996 wherein decision was taken to amend Regulation 1988 further, since as per contemplated amendment he was going to be rendered ineligible for appointment to the post of Director (Administration). In fact, during the pendency of this petition, Regulation 1988 was further amended in 1998 and the relevant portion of the amendments reads as under:-

"2. In the Schedule to the Bureau of Indian Standards (Recruitment to Administration, Finance and Other Posts) Regulations, 1988, against Serial Numbers 6,7,8,9, 14 and 15, in column (10), after the words "Deputy Director", the brackets and words "(Administration and Finance)" shall respectively be inserted."

6. As per the aforesaid Amendment of 1998, for appointment to the post of Director (Admn.) the feeder cadre post has to be that of Deputy Director (Administration & Finance). Petitioner was Deputy Director (Printing-cum-Production) i.e. in TSS group and does not belong to the discipline of Administration & Finance. Thus he is admittedly ineligible for appointment to the post of Director (Administration) by virtue of Amendment Regulation, 1998. The claim of the petitioner is that since clear vacancy of Director (Administration) arose on 1.1.1996, Regulation which existed as on that date should be taken into consideration for filling up of this post on regular basis, and in support of this proposition, learned counsel for the petitioner relied upon the judgments of Supreme Court in the case of Y.V. Rangaiah and Others Vs. J. Sreenivasa Rao and Others, as well as P. Ganeshwar Rao and Others Vs. State of Andhra Pradesh and Others, . He claims that the relevant provision as on that was the one contained in Amendment Regulation, 1990 or 1994 as per which Deputy Director of all the groups were eligible to be considered for post of Director (Admn.) and the consideration was not limited to the group of Admn. & Finance.

7. On the other hand, respondent bids has explained in the counter affidavit that perusal of Regulations 1988 would show that Regulations contained the Recruitment Rules for posts belonging to 3 Groups namely Administration & Finance (A&F), Technical Support Services (TSS) and Hindi. These groups have the post of Asstt. Director and Deputy Director. Thereafter it is explained in detail as to how amendments were made in 1990 to achieve uniformity of designations in bids but it was always the intention that the 3 Groups are maintained separately which were three different cadres and persons belonging to one cadre/group could not be considered for promotion to other cadre/group. Since petitioner was Deputy Director (TSS), he was not eligible for the post of Director (Administration). In fact, according to respondents the amendment of 1998 only

clarifies what was the position existing at all time. In order to appreciate the stand of the respondents, the relevant portion of the Counter Affidavit is extensively reproduced below:-

"3. The Schedule to the bids (Recruitment to Administration, Finance and other Posts) Regulations, 1988, hereinafter referred to as "the Regulations" contain the Recruitment Rules for the posts belonging to three groups, namely, Administration and Finance (A&F) and Technical Support Service (TSS) and Hindi these groups have the posts of Asstt. Director and Deputy Director.

4. When the regulations were originally promulgated in 1988, Asstt. Directors and Dy. Directors of A&F groups were designated as Asstt. Secretaries and Deputy Secretaries (Sl. Nos. 13 and 21 of the Schedule to 1988 Regulations). In 1990, the Schedule was replaced by another Schedule in which the designations of Asstt. Secretary and Deputy Secretary were changed as Asstt. Director and Deputy Director (Sl. Nos. 19 and 27 of the Schedule). The designations of Asstt. Directors and Deputy Directors of TSS and Hindi groups remained the same.

5. In this connection, it may be submitted that before 1990 amendment, only Dy. Secretaries of A&F group were eligible for promotion to the posts of Director under A&F group including the post of Director (Admn.) to which the petitioner was appointed on ad hoc basis. Posts of Asstt. Directors and Deputy Directors in TSS are discipline-wise i.e. Library /Sales/Printing/Foreign Languages, etc. whereas in A&F Cadre, the posts of Asstt. Directors and Deputy Directors are cadred and given the categorisation of "Admn. & Finance". This position remained the same both in 1988 and 1990 Schedules.

6. In this background, the question arises as to whether Dy. Directors of TSS cadre could be considered eligible for promotion to Directors in the A&F Group. Under the existing Regulations, no distinction has been made out between Dy. Directors of A&F and TSS groups and the eligibility column of the recruitment rules merely refers to "Deputy Directors". In 1989, a Cadre Review of Group A posts in TSS and A&F groups was undertaken and proposals sent to the Govt. vide BIS's letter dated 13th December, 1989. The proposals sent to the Govt. made it very clear that A&F and TSS were two distinct Groups with separate channels of promotions and also separate feeder posts. In this connection, kind attention is invited to paragraph 3 of these proposals in which it was stated that the designations of Asstt. Secretary/Deputy Secretary in A&F group were to be changed as Asstt. Director/Deputy Director with the objective of bringing about uniformity of designation in BIS. Copy of the respondents letter dated 13th December, 1989 is annexed hereto and marked as Annexure R-1. These proposals were considered by the Government and as may be seen from para 2 of the Ministry's letter dated 12th February, 1999, the posts of Asstt. Secretary/Deputy Secretary in the A&F cadre were re-designated as Asstt. Director/Deputy Director respectively so as to bring about uniformity of designations with similar posts in the bids Scientific cadre. Again, Annexure I to the said Govt. letter also made it very clear that TSS and A&F groups were two distinct cadres. Copy of

the Ministry's letter dt. 12.2.1990 is annexed as Annexure R-2.

7. The regulations were amended in the light of proposals approved by the Govt. As regards the posts of Asstt. Secretary and Dy. Secretary, the designations were changed as Asstt. Director (A&F) and Dy. Director (A&F) and the revised designations correctly indicated in Col. 2 of the relevant part of the recruitment rules incorporated in the Schedule (SI. No. 19 and 27 of the Schedule). As regard promotion of Asstt. Director (A&F), the position was made clear in Col. 10 of the recruitment rules for the post of Deputy Director (A&F), but in the matter of promotion of Deputy Director (A&F) to Director (A&F) an ambiguity was inadvertently created because Col. 10 of the Recruitment Rules for the posts of Directors (A&F)/Secretary, which lays down eligibility for promotion to these posts used the words "Deputy Directors" which could literally mean Deputy Directors of both (A&F) and TSS groups. In the 1988 Schedule, only Deputy Secretaries of A&F Group were eligible for promotion to the posts of Director (A&F). The intention behind re designation of Deputy Secretary (A&F) to Deputy Director (A&F) being only to bring about uniformity of designations, the eligibility for promotion to the posts of Director in (A&F) group was to remain the same as in 1988 Schedule. The non-indication of "(A&F)" after "Deputy Director", in Col. 10 of the recruitment rules for the posts of Director in (A&F) group was inadvertent. In this connection, it is also noteworthy to mention that the seniority lists of Deputy Directors of A&F and TSS groups are maintained separately.

8. In view of the above position, it is very clear that the designation of Asstt. Secretary/Deputy Secretary of A&F group were changed to Asstt. Directors and Deputy Directors only for bringing uniformity of designations in bids and not for any other purpose. Therefore, it cannot be said that the re designation of these posts was to introduce the new eligibility of TSS Deputy Directors for promotions to the posts of Director in A&F cadre which did not exist before 1990 Amendment.

9. In the light of facts stated in paragraphs 3 to 8 above, the petitioner who is Deputy Director (TSS) was not and is not eligible for the post of Director (Admn.) which forms part of (A&F) group. The omission in suffixing the word "A&F" after the words "Deputy Director" in the eligibility criterion for promotion to the post of Director (Admn.) in SI. No. (viii) Col.10 of the amended Regulations was unintentional but had provided opportunity for promotion to the Deputy Director in Technical Support service group for the post of Director (Admn.) in BIS.

10. The above issue was considered by the Standing Staff Committee, (SSC) of the Bureau in its meeting held on 30th May, 1996 during which it was of the considered view that the omission of the word "A&F" after the words "Deputy Director" under SI.No. (viii), Col. 10 of the said regulations was unintentional and SSC recommended to further amend the Regulations providing for the word "Deputy Director (A&F)" in place of "Deputy Director" under the eligibility criteria for promotion to the post of Director (Admn.) in BIS. The recommendations of SSC were subsequently approved by the Executive Committee (EC) of the Bureau in its meeting held on 11th July, 1996. The draft Amendment to this effect as

recommended by EC has been currently sent to the Central Govt. for necessary approval in accordance with the relevant provision of the bids Regulations."

8. Thus it is explained that while amending Regulations in 1990 the posts of Asstt. Secretary/Deputy Secretary were re-designated as Asstt. Director/Deputy Director, to achieve uniformity in the designations of the officials in Administration and Finance Category as well as TSS category. However, while doing so, the posts which are mentioned in the category of Administrative & Finance including that of Director (Admn.) in the Regulation, where mode of promotion is prescribed, suffix "A&F" against Asstt. Director/Deputy Director was unintentionally omitted by mistake. This mistake led to the confusion that all Deputy Directors of whatever groups were eligible for the post of Director (Admn.) in BIS. When this was realised, the Executive Committee suggested necessary amendments which has now come into existence by amendment of 1998. Thus according to the respondents, the petitioner was not eligible to the post of Director (Admn.) even as per 1990 Regulations and he cannot take advantage of the mistakes and omissions of not adding suffix "(A&F)" against the post of Deputy Director. It was because of such mistake that petitioner was appointed as Director (Admn.) on ad-hoc basis when Mr. Shankara Rao went on deputation to Kendriya Vidyalaya Sangathan. His continuance on Ad-hoc basis is explained in para 13 of the counter affidavit :-

"13. With regard to allegation contained in paragraph 13 of the petition, it is submitted that Shri Shankara Rao was posted as Director (Finance) on his reversion back to respondent No.2 in 1996. However, in accordance with the decision of SSC/EC, Shri Sen has been taken as on deputation from TSS category to "A&F" category becomes eligible for consideration for promotion to the post of Director (Admn.). Consequently, status-quo is being maintained and Shri Sen continues to hold the post of Director (Admn.) only on deputation till regular appointment is made."

9. It may be stated at this stage that during the pendency of the present writ petition, bids Administrative Officers Association filed application for impleadment as Respondent in this case. Stand taken by bids in its counter affidavit is supported by this Association in this application. This application was allowed by this court vide order dated 10.11.1997 impleading this Association as Respondent No. 3. It may also be mentioned that one Shri H. R. Ahuja filed Civil Writ Petition No. 4772/1998. Shri Ahuja belongs to Administration & Finance Group and he was promoted as Deputy Director in this group on 30.3.1993. After rendering 5 years service as Deputy Director, he became eligible to be considered for the post of Director (Admn.). His case is that no other person is eligible and since he became eligible in 1998 he should be promoted to the post of Director (Admn.) and the post held by the petitioner, who belongs to TSS group, is wrongly held. He, Therefore, filed this writ petition with the prayer to promote him as Director (Admn.). Since the question of law to be decided in both the writ petitions is common and the outcome of this petition would have the bearing on

Civil Writ Petition No. 4772/98 filed by Shri H.R. Ahuja, both these writ petitions were heard together.

10. Let us now proceed with the discussions in the present case from the stage where we left. Narration of the facts stated above would demonstrate that in the Regulations of 1988, the three Groups were shown separately namely that of Administrative & Finance, TSS and Hindi. In fact, as discussed in detail at later stage, separate posts in the three Groups are earmarked and separate seniority is maintained. However, when the amendment was made in the year 1990, the suffix "A&F" had been omitted which led to the belief that all Deputy Directors including belonging to TSS groups became entitled to be considered for promotion to the post of Director (Admn.). By amendment of 1998 the original position as existed in Regulations 1988, so far as this aspect is concerned, is restored. Petitioner wants to take advantage of this position by saying that the post of Director (Admn.) fell vacant in the year 1996 and as TSS group was also eligible to be considered for the post of Director (Admn.), as per Amendment Regulations 1990, he has right to be considered for the said post. On the other hand, respondents maintain that the separation of three groups was also maintained and this was the position even while amending the Regulations in 1990 and merely because the error crept in due to omission of words "A&F" as suffix to Asstt. Director/Deputy Director, petitioner cannot take advantage of this and legal position remains the same which was in Regulations, 1988 and amendment of 1998 only clarifies what was always the position. The matter is just to be considered in the light of this controversy. From the Counter-Affidavit filed by respondents supported by various documents, it is clear that the amendment of 1998 is only clarification in nature and it had supplied what was mistakenly omitted by Amendment of 1990. There is no reason to disbelieve the stand taken by the respondents. Along with the counter affidavit, respondents have filed copy of letter dated 13.12.1989 addressed by bids to Jt. Secretary, Ministry of Food & Civil Supplies which referred to the Cadre Review of Group A posts in TSS as well as A&F and other Posts and it is mentioned that matter was reconsidered in the light of broad guidelines of Government of India and revised proposal was sent along with the said letter for consideration and approval. This letter throws light on the aspect as to what was the circumstances under which Regulations, 1988 were under contemplation of amendment. Further, restructuring of Group A posts which was proposed, clearly suggests that TSS cadre was different from Administration and Finance Cadre and posts of two cadres were earmarked separately. In fact, after the proposal was considered by the Government of India, approval was conveyed vide letter dated 12.2.1990 and perusal of this letter clinches the issue. Not only it shows that two cadres are different, para 2 of the said letter further reads as under :-

"2. The posts of Assistant Secretary and Deputy Secretary in the Administration & Finance Cadre would be redesignated as Asstt. Director and Deputy Director respectively so as to bring uniformity of designations with similar posts in the bids Scientific cadre."

11. It may also be relevant to point out that even as per Regulation 1988, the posts of TSS and A&F were separate categories as noticed above. Regulation No. 7 of 1988 Regulation reads as under:

"7. Categories of posts and their authorised strength:- The categories of posts and their authorised strength shall be such as may from time to time be determined by the Executive Committee with the approval of the Central Govt. The categories of posts and their authorised strength as on the 30th September, 1987 are given in the Schedule."

12. The post of Director (Admn.) is mentioned at SI. No. 6 of the Schedule which is clearly in Administration Cadre. In fact, even the seniority of two cadres is separately maintained. The petitioner as Deputy Director (TSS) was shown in the seniority list of TSS cadre which is separate from the seniority list of A&F cadre.

13. Thus, it was always the intention that TSS as well as Administration & Finance were two separate cadres and re designation Asstt. Director and Deputy Director was given in the amended Rules to bring uniformity of designation with similar posts in bids Scientific Cadre. Once this position is accepted, the conclusion is obvious. Petitioner who belongs to TSS Cadre cannot be held eligible for appointment as Director (Administration) which falls in A&F Cadre. Therefore, it can be stated that petitioner was not eligible even as per 1990 amendment. In order to ensure that no anomaly or adverse consequence results, one has to read this suffix "(A&F)" even in 1990 Amendment or to put it differently, amendment of 1998 is to be treated as clarificatory of the position which was always there even in the amendment Regulations 1990. Merely because there was an omission by mistake in putting this suffix "(A&F)" in the Regulation 1990 one cannot allow persons of different cadre i.e. TSS to become eligible in the cadre of Administration & Finance. For this reason I am not inclined to accept the submission of the petitioner that he was eligible as per amended Regulation 1990 and cannot be made ineligible by amendment of 1988. The judgments cited by the petitioner, Therefore, have no application to the facts and circumstances of this case.

14. If the petitioner was promoted on ad hoc basis as Director (Admn.) vide order dt. 3.9.93 because as on that date no Deputy Director in Administration & Finance was eligible or it was because of confusion and mistake, in either case such ad hoc promotion of the petitioner to the post of Director (Administration) did not confer any right upon him, particularly in view of what is stated in para 2 of the Memo dt. 3.9.93.

15. Thus I hold that petitioner is not eligible to be considered for the post of Director (Admn.) as per the Regulations. This writ petition, Therefore, fails and is hereby dismissed. Rule stands discharged. However, there shall not be any order as to costs.