

(2011) 01 MP CK 0037

In the Madhya Pradesh High Court

Case No : Writ Petition No. 1607 of 1997

Dr. K.M. Shrivastava

APPELLANT

Vs

The Chairman and Managing Director, Bharat Heavy
Electricals Ltd and Others

RESPONDENT

Date of Decision : 25-01-2011

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2011) 01 MP CK 0037

Hon'ble Judges : Rajendra Menon, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rajendra Menon, J.—Challenging the action of the Respondents in not granting benefit of pay and allowance on his promotion to the post of Manager with effect from June 1985 and subsequently claiming promotion to the post of Senior Manager and Deputy General Manager with effect from 1992 and on subsequent dates, Petitioner has filed this writ petition. Challenge is also made to an order-dated 25.3.1997, by which certain representations of the Petitioner have been rejected.

2. Petitioner claims to be a highly qualified engineer with excellent academic record. He has detailed his academic career and profile in the writ petition to indicate the exemplary academic and professional career.

3. In pursuance to an advertisement issued by the Respondents, it is seen that Petitioner was appointed initially in the Respondents' establishment as a Senior Engineer and joined the Hyderabad office of the Respondents' establishment in July 1978, after he was appointed vide Annexure P/1 dated 30.6.1978. According to the Petitioner, the promotion and other service conditions in the Respondents' establishment are governed by various Personal Manuals and orders filed as Annexure P/2. It is the case of the Petitioner that for career growth on promotion in the Respondents' establishment, availability of vacancy is not a criterion.

Employee is only required to put in the requisite years of service, in the feeder cadre and has to be meritorious and on the basis of the performance appraisal, it is stated that the promotion is granted. It is the case of the Petitioner that once an employee completes the requisite years of service in the feeder cadre, he is entitled for promotion from time to time. According to the Petitioner, he is senior to various employees whose examples are given in paragraphs 5.5. In spite thereof Petitioner, who was entitled to be promoted as Deputy Manager in the year 1980, was not considered and he was considered for this promotion only in the year 1982. According to the Petitioner in October 1984, he was deputed to undergo certain training for a period of two years with KWU Mulheim, West Germany under a Technical Collaboration Agreement vide order-dated 18.10.84 - Annexure P/4. Petitioner undertook the training for a period of two years and five months and thereafter returned from West Germany in March 1987 and joined the establishment of the Respondents in the Corporate R & D Office at Hyderabad, as Deputy Manager on 6.4.1987. Office order in this regard is Annexure P/5 dated 13.4.1987. It is the case of the Petitioner that while the Petitioner was on deputation and undergoing training in West Germany between October 1984 to March 1987, various persons were promoted from the cadre of Deputy Managers to the cadre of Manager with effect from June 1987. This promotion was granted to the Petitioner after he joined duties on return from West Germany vide order-dated 29.6.1987.

4. The first grievance of the Petitioner is that even though this promotion was granted to the Petitioner retrospectively with effect from June 1985, it was only granted to him as a notional benefit. Actual monetary/financial benefit of this promotion was not granted with effect from June 1985, but it was only granted from 6.4.1987 i.e... the date on which he joined the Corporate Office at Hyderabad. The first claim of the Petitioner is that he is entitled to all the financial and monetary benefit on promotion as Manager with effect from 25.6.1985, as the delay in granting this promotion was because of negligence on the part of the Respondents and the Petitioner, who at the relevant time was undergoing training in West Germany, cannot be penalized by denying all consequential benefits of the promotion to this post of Manager. Accordingly, contending that the claim of the Petitioner for retrospective promotion with all consequential benefits in the Cadre of Manager is denied with effect from June 1985, the first relief claimed is to direct the Respondents to grant the aforesaid benefit to the Petitioner.

5. Thereafter, it is the case of the Petitioner that as per the norms for promotion fixed in the Respondents' establishment, Petitioner completed 4 years of service in the feeder cadre and became eligible for promotion as Senior Manager in the year 1989. A Departmental Promotion Committee (hereinafter referred to as "DPC") was convened, which met on 5.6.89. Petitioner was called to participate in the interview and process of selection vide Annexure P/7. Even though various persons were promoted Petitioner in spite of his excellent performance and there being nothing adverse against him was not promoted. He represented vide

Annexure P/8 on 30.6.89. Nothing was done. In the meanwhile, various other persons who were junior to him in the cadre of Manager were also promoted as Senior Managers again in the year 1990, when Petitioner was also called for interview vide call letter dated 5.6.90 - Annexure P/9, inspite thereof Petitioner was not promoted. Petitioner points out that during this period his service career was excellent, he was sent for a Conference to Hong Kong in September 1989, where he read certain important Research Papers in an International Conference. Again when the Petitioner was not promoted as Senior Manager in the year 1990, Petitioner represented on 13.6.90, vide Annexure P/10. It is the case of the Petitioner that in July 1990 he suffered a massive heart attack and thereafter he was transferred from Hyderabad to Bhopal in October 1990, vide Annexure P/11. Petitioner came to Bhopal and while in Bhopal again a DPC met on 7.6.1991, at Bhopal, for promotion to the post of Senior Manager. In this promotion exercise also Petitioner was not recommended and the promotion was not granted to him inspite of representation. Call letter dated 15.5.90 is filed as Annexure P/13. Thereafter, Petitioner was again interviewed by the DPC on 4.6.92 and in this he was promoted to the post of Senior Manager in Steam Turbine Engineering vide order-dated 12.7.92. Accordingly, the second grievance of the Petitioner is that his promotion to the post of Senior Manager, which should have been granted in the year 1989, when he was called for interview vide call letter-dated 5.6.89 - Annexure P/7, is illegal; there was nothing adverse against him, no adverse entry was communicated to him and the delay in promotion to the post of Senior Manager is illegal. It is stated that inspite of exemplary service career, participating in various national and international seminars and conferences, where Petitioner had presented various research papers, Petitioner was not promoted even though he had not received any adverse communication. Petitioner continued to work on the post of Senior Manager after he was promoted in the year 1992, he represented and nothing was done. However, it is stated that subsequently various candidates were again considered and promoted to the post of Dy. General Manager, Petitioner was also called to participate in the interview in June 1995 vide Annexure P/18, but again the Petitioner was not promoted. He submitted representation and when no action was taken, he approached the Grievance Redressal Committee and when nothing was done he sent a reminder vide Annexure P/22, on 8.1.97, and when the representation was not considered he filed this writ petition on 7.1.1997 and during the pendency of this writ petition, his representation was rejected vide Annexure P/23, on 25.3.97.

6. Accordingly, a three fold grievance is made by the Petitioner in the matter of granting monetary benefit on his promotion on the post of Manager; non-promotion to the post of Senior Manager and Deputy General Manager, inspite of being interviewed for these posts by the DPC. Case of the Petitioner is that there was nothing adverse against him, no adverse communication is made and, therefore, denial of promotion is nothing but a malafide action on the part of the Respondents and the same is unsustainable. Accordingly, contending that the

legitimate claim of the Petitioner for promotion is denied and there is no reason for the same, Petitioner seeks for interference into the matter.

7. Respondents represented by Shri Ashok Lalwani have filed a detailed reply and two preliminary objections are raised by the Respondents. The first preliminary objection is to the effect that while Petitioner was working in a particular Corporate office of BHEL at Hyderabad, he was sent to training to West Germany and the first grievance of the Petitioner with regard to non-grant of promotion in time on the post of Manager arose when these promotions were ordered in June 1985 by the Corporate Office at Hyderabad. It is stated that Petitioner was promoted to this post vide order-dated 25.6.1987 - Annexure P/6 and the grievance of the Petitioner with regard to grant of financial benefit on promotion to this post of Manager is with regard to his working and posting in the office of the Company at Hyderabad and as the said Company is not Respondent and as the Hyderabad Corporate Office is not impleaded as party, it is stated that the petition is unsustainable. That apart, it is stated that the cause of action for this arose in the year 1987, when only notional promotion was granted to the Petitioner and, therefore, the petition filed after a period of more than 10 years in this regard is not maintainable.

8. That apart, the next preliminary objection is that the promotion exercise conducted for promotion to the post of Senior Manager in the year 1989 and 1990, as claimed by the Petitioner, were also undertaken by the Corporate R & D Office at Hyderabad and the reason for non-promotion of the Petitioner to these post can be explained only by that Office. Again as the Corporate R & D Office, Hyderabad is not a party before this Court, the petition is liable to be dismissed on this count. That apart, it is stated that for the promotions due in 1989 and 1990, petition filed after a lapse of more than seven years is barred by the principle of "delay and latches".

9. Apart from the aforesaid preliminary objection, as far as supersession of the Petitioner for promotion to the post of Senior Manager in the promotion exercise conducted by the Respondents' Bhopal Office on 7.6.1991 is concerned, it is the case of the Respondents that the promotion to the higher post is not automatic. Even though requisite service in the feeder cadre is required to be undergone, the promotion is based on personal interview, appraisal of the career and performance of the incumbent concerned and in the present case Petitioner was interviewed for promotion to the post of Senior Manager on 7.6.1991 and for the post of Deputy General Manager in June 1995. In both these interviews Petitioner's career profile was taken note of and the DPC having not recommended his name for promotion on merits, it is stated by Shri Ashok Lalwani that no interference can be made. It is emphasized by Shri Lalwani that promotion is not automatic merely on completing a particular period of service in the feeder cadre. Promotion is based on the performance of the individual and after evaluating his work, capability and various other aspects, promotion is ordered. It is the case of the Respondents that Petitioner was interviewed in

Bhopal on two occasions for considering his case for promotion to the post of Senior Manager and again to the post of Deputy General Manager and on both these occasions the Committee did not recommend his case for promotion. Even if there was nothing adverse against the Petitioner, the Petitioner has to come within the merit criteria, in the absence of any malafides being made out in not promoting the Petitioner and any statutory rule or regulation being violated, it is stated by Shri Lalwani that no case is made out for interference. That apart, it is pointed out that Petitioner is no more in the employment of the Respondents, he has taken voluntary retirement long back and his whereabouts are not known, as far as the Respondents are concerned. Accordingly, on these grounds, Respondents submit that the petition be dismissed.

10. It is further argued by learned Counsel for the Respondents that with regard to the cause of action that accrued to the Petitioner for claiming monetary benefit on his promotion to the post of Manager and denial of promotion by the Corporate Office at Hyderabad to the post of Senior Manager, the territorial jurisdiction to deal with the matter rests with the High Court of Andhra Pradesh at Hyderabad and this Court lacks territorial jurisdiction to adjudicate this dispute. 11-Having heard learned Counsel for the parties and on a perusal of the records, it is clear that the reliefs claimed by the Petitioner in this petition are three folded:

(i) The first relief is that he be paid the arrears and all consequential financial benefits treating him to be promoted on the post of Manager with effect from June 1985.

(ii) The second relief is that he should be granted promotion on the post of Senior Manager with effect from the year 1989, when the DPC interviewed him on 5.6.1989.

(iii) The third relief is with regard to promotion to the post of Deputy General Manager, when he was interviewed by the DPC in June 1995.

12. As far as the first relief is concerned, it is clear that when Petitioner was promoted from the post of Deputy Manager to the post of Manager, he was working in the Corporate R & D Office of the Respondents, situated at Hyderabad. Promotion to this post of Manager vide order-dated 29.6.1987 was granted to the Petitioner by the Corporate Office at Hyderabad. That being so, the reason for denying the financial benefit to the Petitioner on promotion to the post of Manager with effect from June 1985 has to be justified by the Corporate Office of BHEL, Hyderabad and the said office is not before this Court. In the absence of the said office being impleaded as party, the said relief cannot be granted to the Petitioner as the relief in this regard is to be claimed against the Corporate Office of BHEL, Hyderabad. That apart, even if the Petitioner is entitled to the said benefit, the cause of action for this arose on 29.6.1987, when the Petitioner was working in Hyderabad and the relief claimed is for a period from June 1985, when also Petitioner was posted in Hyderabad. That being so, apart

from the fact that the territorial jurisdiction to agitate this dispute is not available to this Court, there is inordinate delay of more than 10 years in claiming the aforesaid relief before this Court. Taking note of all these circumstances and the preliminary objection raised by the Respondents, the first relief claimed has to be and is accordingly rejected.

13. As far as promotion to the post of Senior Manager after interviews were held on 5.6.1989 and 5.6.1990 are concerned, both these interviews were conducted by the Corporate Office at Hyderabad before transfer of the Petitioner from Hyderabad to Bhopal, in August/October 1990. The reason for rejection of the case of the Petitioner for promotion in the year 1989 and 1990 has to be explained by the Hyderabad office and again the said office is not before this Court. Petitioner was again superceded for promotion to the post of Senior Manager, when the DPC met on 7.6.1991 and at that point of time he was working in Bhopal. Thereafter, when he was interviewed on 4.6.1992, promotion on the post of Senior Manager was granted to him vide Annexure P/14 on 12.7.1992.

14. As far as promotion from one post to another is concerned, promotion in accordance to the Rules available on record i.e.... Annexure P/2 - filed by the Petitioner; and, Annexure R/1 - filed by the Respondents, indicates that the promotion is not automatic. Even though existence of a post may not be a pre-condition for promotion and consideration can be made after a particular period of service in the feeder cadre, but the promotion is done strictly on the basis of merit, which is decided by an appropriate committee. If the guidelines and principles for promotion as is contained in the Promotion Policy - Annexure R/1 is perused, it would be seen that promotion from one Group/Cadre to another Group/Cadre is on the basis of merit, which is ascertained through a selection process, which includes appraisal of performance, test and interview, designed to determine the employee's skill, aptitude and ability for functioning in the Higher Group/Cadre. Merely because the Petitioner is eligible and no adverse remark is communicated to him that by itself is not a ground to hold that Petitioner is entitled for promotion. When the promotion is on merit and a Selection Committee is constituted to interview/test the employee's skill and aptitude and when the records indicate that for the purpose of suitability and merit of the Petitioner for promotion to the post of Senior Manager, Petitioner was interviewed by the appropriate DPC on 5.6.1989, 5.6.1990 and again on 7.6.1991, in the absence of any malafides alleged and in the absence of any rule or regulation pertaining to the Promotion Policy shown to be violated, this Court cannot interfere with the decision of the Committee, which refused to recommend the case of the Petitioner for promotion.

15. Once it is seen that the promotion is based on merit and an Expert Committee is appointed to assess the suitability and merit of the candidate, this Court cannot sit over the decision of such an Expert Committee as if it is exercising appellate jurisdiction over the Committee. Interference into such

matter in a writ petition under Article 226 of the Constitution is limited to reviewing the process of selection in the backdrop of the rules and their violation, if any. Petitioner except for contending that he has an exemplary service and is, therefore, entitled for promotion is unable to demonstrate before this Court as to what is the error under law or fact committed by the Committee in assessing the suitability of the Petitioner on merit. Merely because Petitioner feels that he should be promoted, this Court cannot interfere in the matter for the simple reason that a duly appointed committee evaluated the merit of the Petitioner in the interview and did not recommend his case for promotion. However, when the Committee recommended the case of the Petitioner for promotion in the year 1992, after he was interviewed on 4.6.1992, Petitioner was granted promotion on 12.6.1992 vide Annexure P/14. Contention of the Petitioner that no adverse remarks were communicated to him and, therefore, his supersession is illegal is nothing but a vague and ambiguous argument, which cannot be accepted. There is nothing to indicate that the promotion was based on the assessment of CR Gradings of the Petitioner or any adverse CR is taken note of. Petitioner has not given any specific details in this regard except for making vague allegations. In view of the above, this Court does not find any error in the supersession of the Petitioner to the post of Senior Manager.

16. That apart, the same principle of promotion will apply for promotion to the post of Deputy General Manager. In this case also the DPC interviewed the Petitioner in June 1995 and he was not found eligible for promotion. This promotion is also based on merits and once the duly constituted committee has evaluated the merit of the Petitioner and did not recommend his case for promotion, this Court cannot interfere in the matter as if it is exercising appellate jurisdiction. The same principle as is indicated hereinabove, in the matter of promotion from Manager to Senior Manager will apply in the case of promotion from the post of Senior Manager to Deputy General Manager also and once the claim of the Petitioner is considered and rejected by the Selection Committee, this Court does not deem it appropriate to interfere in the matter.

17. Accordingly, in the matter of rejecting the claim of the Petitioner for promotion to the posts, Respondents have not committed any error, which warrants consideration. It is seen that as per the requirement of the promotion policy, a duly constituted selection committee interviewed the Petitioner and having not found him fit for promotion, no further indulgence in the matter is warranted in this writ petition in the absence of any statutory rule or regulation being shown to be violated or malafides established.

18. That apart, Petitioner has already left the services of the Respondent and it seems that he is only agitating the matter for gaining certain monetary benefit.

19. Considering the totality of the circumstances and for the grounds and reasons indicated hereinabove, finding no case for interference the writ petition is dismissed without any order so as to costs.