
(2000) 03 RAJ CK 0002

In the Rajasthan High Court

Case No : Civil Writ Petition No's. 225 of 1996, 450 of 1995 and 4934 of 1999

Dr. P.D. Khandelwal

APPELLANT

Vs

Rajasthan Civil Services Appellate Tribunal and Others

RESPONDENT

Date of Decision : 13-03-2000

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2000) 3 WLC 179 : (2000) 2 WLN 38

Hon'ble Judges : V.S. Kokje, J

Bench : Single Bench

Judgement

V.S. Kokje, J.—These petitions relate to the promotions to the post of Reader (Associate Professor) in the Department of Medical and Health, Govt. of Rajasthan for the year 1989-90. A meeting of the Departmental Promotion Committee for appointment to the post of Associate Professor (Medicine) was held on 27th May, 1989. At this meeting promotions for the Years 1983-84 to 1989-90 were considered. For the year 1988-89 four vacancies were found to be existing, out of which 2 were earmarked for seniority cum merit quota and the other two for merit quota. Out of the 12 candidates in the zone of consideration for the year 1988-89. Dr. A.S. Sulemani and Dr. R.K. Goyal were selected against seniority cum merit quota and Dr. B.S. Gupta and Dr. Ashok Pangaria were selected against merit quota. At the same meeting promotions against 11 vacancies for the year 1989-90 were considered. Six out of these vacancies were to be filled in on the basis of seniority cum merit and the remaining 5 on the basis of merit. 35 candidates were found to be eligible and in the zone of consideration including Dr. L.K. Bhatnagar, Dr. K.C. Jain, Dr. V.D. Maheswari, Dr. Raja Babu Panwar and Dr. P.D. Khandelwal who are amongst those whose cases are to be considered in these petitions. Dr. Abdul Hakim, Dr. J.S. Ujjwal, Dr. D.S. Mathur, Dr. R.P. Kothari, Dr. S.S. Haldia, Dr. Ram Pal (SC) were selected in seniority cum merit quota, Dr. Ramesh Roop Rai and Dr. S.K. Arora were selected in merit quota and Dr. D.K. Kochar, Dr. R.C. Gupta and Dr. L.K. Bhatnagar were selected by seniority cum merit against vacancies in merit quota, sufficient

number of merit candidates not being found suitable for promotion in that quota. On the basis of selection, the promotion and posting orders were issued.

2. It was later found out that the vacancies calculated for the purpose of promotions considered by the D.P.C. in meeting dated 27th May, 1989 were not correctly calculated and vacancy created by death of Dr. R.N. Mathur in the year 1987-88 and vacancy created in the year 1988-89 by promotion of Dr. N.M. Mathur were not reckoned. When this was detected a Review D.P.C. meeting was ordered which was held on 18.10.1993. As a result of this Review D.P.C. Dr. D.K. Kochar and Dr. R.C. Gupta who were earlier promoted on the basis of seniority cum merit against vacancies in merit quota got promoted directly in seniority cum merit quota and Dr. Raja Babu Panwar and Dr. P.D. Khandelwal were also selected in merit quota in addition to Dr. Ramesh Roop Rai and Dr. S.K. Arora even though they had been considered for merit promotion in the D.P.C. meeting held on 27.5.1989 and were not found to be fit for selection in the merit quota then. The position of Dr. L.K. Bhatnagar remained unchanged as he was found to be suitable for being promoted in the seniority cum merit quota against the unfilled post of merit quota which was his position earlier also. Promotion and posting orders were issued in compliance with the decisions of the D.P.C. meeting dated 18.10.1993 also.

3. After the review D.P.C. was held it is said that Dr. V.D. Maheshwari who was the 5th candidate in the reserved lists prepared by the D.P.C. in meetings dated 27.5.1989 and 18.10.1993 filed a representation contending that his record was not rightly considered. Again a meeting of the D.P.C. to review the result of the D.P.C. meeting dated 18.10.1993 was ordered and this review D.P.C. meeting was held on 13.1.1995. As a result of the review, the position of the seniority cum merit quota remained unchanged but Dr. V.D. Maheshwari was also found to be suitable for promotion in the merit quota in addition to the four candidates found suitable at the meeting dated 18.10.1993 with the result that the promotion of Dr. L.K. Bhatnagar in the seniority cum merit quota against the post of merit quota was set aside and he was pushed to the first place in the reserved list. Again promotion and posting orders were issued.

4. The following Chart will demonstrate the above factual position with clarity.

CHART:

Selection for the Year 1989-90 11 Vacancies: 6 by Seniority Cum Merit 5 by Merit D.P.C. Dated D.P.C. DATED D.P.C. Dated 27.5.1989 18.10.1993 13.1.1995
Senior- 1. Dr. Abdul Hakim 1. Dr. D.S. Mathur 1. Dr. D.S. Mathur Rity 2. Dr. J.S. Ujjawal 2. Dr. R.P. Kothari 2. Dr. R.P. Kothari Cum 3. Dr. D.S. Mathur 3. Dr. S.S. Haldia 3. Dr. S.S. Haldia Merit 4. Dr. R.P. Kothari 4. Dr. D.K. Kochar 4. Dr. D.K. Kochar 5. Dr. S.S. Haldia 5. Dr. R.C. Gupta 5. Dr. R.C. Gupta 6. Dr. Ram Pal (SC) 6. Dr. Ram Pal (SC) 6. Dr. Ram Pal (SC) Merit 1. Dr. Ramesh Roop rai 1. Dr. Ramesh Rooprari 1. Ramesh Roop rai 2. Dr. S.K. Arora 2. Dr. S.K. Arora 2. Dr. S.K. Arora 3. Dr. Raja Babu Panwar 3. Dr. V.D. Maheshwari 4. Dr. P.D.

Khandelwal 4. Dr. Raja Babu Panwar 5. Dr. P.D. Khandelwal Senio- 1. Dr. D.K. Kochar 1. Dr. L.K. Bhatnagar rity 2. Dr. R.C. Gupta Cum 3. Dr. L.K. Bhatnagar Merit Reserved List 1. Dr. K.C. Jain 1. Dr. K.C. Jain 1. Dr. L.K. Bhatnagar 2. Dr. O.P. Garg 2. Dr. O.P. Garg 2. Dr. K.C. Jain 3. Dr. Suresh Medatwal 3. Dr. Suresh Medatwal 3. Dr. O.P. Garg 4. Dr. Mohd. Sabir 4. Dr. Mohd. Sabir 4. Dr. Suresh Medatwal 5. Dr. V.D. Maheshwari 5. Dr. V.D. Maheshwari 5. Dr. Mohd. Sabir

5. Dr. K.C. Jain who is senior to Dr. Ramesh Roop Rai, Dr. S.K. Arora, Dr. V.D. Maheshwari, Dr. Raja Babu Panwar and Dr. P.D. Khandelwal filed an appeal before the Rajasthan Civil Service Appellate Tribunal challenging the promotions granted to his juniors, alleging that they did not fulfil the requirement for merit promotion as they did not possess Very Good or Outstanding remarks in the A.P.A.R.s for the preceding seven years. Dr. L.K. Bhatnagar who was selected on the basis of Seniority cum merit against merit quota in the D.P.C. meetings dated 27.5.1989 and 18.10.1993 and who was pushed to the reserved list because of promotion of Dr. V.D. Maheshwari in the merit quota, filed S.B. Civil Writ Petition No. 450/95 in this Court straightaway. The Rajasthan Civil Services Appellate Tribunal partially allowed the appeal quashing the merit promotion of Dr. Raja Babu Panwar and Dr. P.D. Khandelwal, Dr. Raja Babu Panwar did not challenge that decision and Dr. P.D. Khandelwal has challenged it by filing S.B. Civil Writ Petition No. 225/96. The State of Rajasthan also challenged the decision of the Tribunal by filing a petition at Jaipur which was transferred to Jodhpur and registered as S.B. Civil Writ Petition No. 4934/99. All these cases were heard together and are being decided by this common order.

6. The following questions arise for determination in these cases:

(1) Whether the decision of the D.P.C. in its meeting dated 27.5.1989 was validly subjected to a review?

(2) Whether the meeting of the review D.P.C. held on 18.10.1993 could select Dr. Raja Babu Panwar and Dr. P.D. Khandelwal in the merit quota when they were found to be not eligible for promotion under merit quota at the D.P.C. meeting dated 27.5.1989 especially when for promotion in merit quota a candidate must have Very Good or Outstanding remarks in the A.P.A.R.s for the preceding seven years?

(3) Whether the decision of the Review D.P.C. meeting dated 18.10.1993 was validly subjected to further review?

(4) Whether the Review D.P.C. in its meeting dated 13.1.1995 could have selected Dr. V.D. Maheshwari in the merit quota when his case was earlier considered for promotion in the merit quota in the D.P.C. meetings dated 27.5.1989 and 18.10.1993 and he was not found suitable especially when the promotion on merit is given on the basis of Very Good or Outstanding remarks during the preceding seven years?

(5) Whether the petition filed by Dr. L.K. Bhatnagar should not be entertained

because he has not exhausted the remedy of appeal?

7. The promotions in the Medical Service Collegiate Branch are governed by the Rajasthan Medical (Collegiate Branch) Service Rules, 1962. Sub-rule (11-B) of Rule 24-A is relevant for the purpose and is being reproduced hereunder:

Sub-rule (11-B) of Rule 24-A: The Govt. or the Appointing Authority may order for the review of the proceedings of the D.P.C. held earlier on account of some mistake or error apparent on the face of record, or on account of a factual error substantially affecting the decision of the D.P.C. or for any other sufficient reasons e.g. change in seniority, wrong determination of vacancies, judgment/direction of any court or Tribunal, or where adverse entries in the confidential reports of an individual are expunged or toned down or a punishment inflicted on him is set aside or reduced. The concurrence of the Department of Personnel and the Commission (where Commission is associated) shall always be obtained before holding the meeting of the review D.P.C.

8. So far as the meeting dated 18.10.1993 is concerned obviously the necessity arose because of wrong calculation of vacancies for the year 1988-89 & 1989-90 which resulted in omission of two posts from consideration by the D.P.C. meeting dated 27.5.1989. As wrong determination of vacancies is a specific reason given by way of illustration in Sub-rule (11-B) of Rule 24-A for ordering review, it cannot be doubted that review D.P.C. Meeting could be ordered for that reason. The decision to call a review D.P.C. meeting to review the decision of D.P.C. meeting dated 27.5.1989 was therefore perfectly in order being in accordance with rules. First question therefore has to be answered in the affirmative.

9. In its meeting dated 18.10.1993 the D.P.C. did not consider two senior most candidates Dr. Abdul Hakim and Dr. J.S. Ujjawal in seniority cum merit quota as they had been considered and selected against the vacancies of the earlier years. The next two candidates in the seniority cum merit quota Dr. D.K. Kochar and Dr. R.C. Gupta who were declared selected in the seniority-cum-merit quota against the vacancies of merit quota were declared selected under the seniority cum merit quota in places vacated by Dr. Abdul Hakim and Dr. J.S. Ujjawal. However in the merit quota in addition to the two candidates earlier selected viz. Dr. Ramesh Roop Rai and Dr. S.K. Arora, Dr. Raja Babu Panwar and Dr. P.D. Khandelwal were also declared to be selected and the position of Dr. L.K. Bhatnagar who was earlier selected in the seniority cum merit quota against the vacancy of merit quota remained unaltered. The question raised is when according to the Rule for selection for promotion on the basis of merit, candidates Outstanding or consistently Very Good in their A.P.A.R.s for the preceding 7 years were to be selected and if these two candidates had such record why they could not get promoted against merit quota in the D.P.C. meeting dated 27.5.1989? A serious doubt was therefore raised as to the selection of these two additional candidates in the merit quota.

10. In order to verify the eligibility of these two candidates for being promoted in

the merit quota, the original confidential records were called, produced and referred to. The result of inspection of the record is as under:

(A) Record of Dr. Raja Babu Panwar:

11. The D.P.C. at its meetings had considered seven years record from 1981-82 of the candidates in zone of consideration. In the year 1981-82 Dr. Raja Babu Panwar was held to be a "Good Officer". In the year 1982-83 the Reporting Officer adjudged him "Intelligent, Hard working and his work was rated to be of Good quality" and the Reviewing Officer agreed with him. This could be construed a "Good" remark only and not Very good or Outstanding. In the year 1983-84 again the Reporting Officer assessed the Officer to be "Good and dependable worker with Good Character and conduct" and the Reviewing Officer agreed with him. This remark also cannot be treated as "Very good" or "Outstanding". It has to be treated as a "Good" remark only. In the year 1984-85 the Reporting Officer gave an overall assessment about the officer as "Work, conduct and character Good, his understanding of problems is excellent, I rate his work as excellent." There is an overwriting and it appears that the earlier Good remark was tried to be improved to Very Good by inserting letter "V" before the Word "Good". The Reviewing Officer agreed with the remark. If this overwriting and interpolation is to be ignored, since the Reporting Officer has rated his work to be excellent this remark could be treated as "Very good" or "Outstanding". In the year 1985-86 his work, conduct and character were assessed as "Very good" and this remark could also be taken as "Very Good". In the year 1986-87 he was assessed as follows: "Work, Conduct and Character Good to excellent, overall rating be considered as excellent". Even to a naked eye this entry appears to be doubtful, clearly, "work conduct and character good" appears to be the original remark and thereafter words "to excellent, overall rating be considered as excellent" seem to have been added later on with a different pen and probably in the hand of some one else than the person who gave the original remark. In the year 1987-88 he was rated as "Good". In the year 1988-89 he was rated to be "Outstanding Officer". In the year 1989-90 he was rated to be "Very Good Officer". Even taking the doubtful entries to be Very Good, the record cannot be said to be Outstanding or consistently Very Good. It appears that the D.P.C. at its meeting dated 27.5.1989 had correctly decided not to grant promotion under merit quota to Dr. Raja Babu Panwar and probably the entries before the D.P.C. meeting dt. 27.5.1989 were in their original form without any overwriting, addition, alteration or interpolations. On the basis of his A.P.A.R.s he did not fulfil the criteria fixed for merit promotion.

(B) Record of Dr. P.D. Khandelwal:

12. In the year 1981-82 overall assessment of Dr. P.D. Khandelwal was "on the whole his performance is excellent". In the year 1982-83 he was assessed "Very Good". In the year 1983-84 he was assessed as "Very good". In the year 1984-85 again he was assessed as "Very good". A.P.A.R. for the year 1985-86 is not available in the record. In the year 1986-87 there is some doubt about the

remarks. In the column for overall assessment, earlier word "NIL" was written. After scoring it out the following remark has been written: "He has Good personality and character, excellent academician and Teacher and Very Good Research aptitude". However, just above the signatures of the Reporting Officer Dr. U.S. Mathur, Words "Very Good" are written. Reviewing Officer has given the following remark to him: "Good Teacher and budding physician, I fully agree with the Reporting Officer". In the year 1987-88 he has been assessed as "Very good" teacher and physician. In the year 1988-89 he was rated as "Very good" teacher. In the year 1989-90 he was on deputation on a foreign assignment to Saudi Arabia. He later on filed a service certificate showing evaluation of his last annual service report as "Very Good". The service certificate produced by him certifies evaluation for last annual service report to be "Very Good" and the certificate is issued on 10.11.1993. This cannot therefore be taken to be the annual report for the year 1989-90. Thus the question is whether the A.P.A.R record of Dr. P.D. Khandelwal could be taken as Outstanding or consistently Very Good. So far as the record which is not available is concerned, that cannot be treated to be adverse against the candidate. So far as the doubtful report of the year 1986-87 is concerned, the Reviewing Officer has given the remark "Good Teacher and budding physician, I fully agree with the R.O.". This shows that the, Reporting Officer had given certain remarks. If column No. 7 for overall assessment did not contain any remark it was not possible that the Reviewing Officer would observe that he fully agreed with the R.O. It therefore appears that the Word "NIL" was scored out by the Reporting Officer himself as he had put it by mistake having written the same word in the previous four columns. In absence of any other material to contradict the remark, the remark will have to be taken to be original and has to be taken as Very Good remark. Thus in the case of Dr. P.D. Khandelwal the D.P.C. meeting dated 18.10.1993 had come to the correct conclusion. It appears that since the foreign service record was not with the D.P.C. at the time of meeting dated 27.5.1989 Dr. P.D. Khandelwal was not considered to be fit for being promoted in merit quota then.

13. This brings us to D.P.C. meeting dated 13.1.1995. This was claimed to be a meeting held under Sub-rule (11-B) of Rule 24-A. As already seen a review of the proceedings of a D.P.C. could be ordered on account of a mistake or error apparent on the face of record or on account of a factual error substantially affecting the decision of the D.P.C. or for any other sufficient reasons e.g. change in seniority, wrong determination of vacancies, judgment/direction of any Court or Tribunal or where adverse entries in the confidential reports of an individual are expunged or toned down or punishment inflicted on him is set aside or reduced. The question is whether a review D.P.C. under this Sub-Rule could be ordered at the instance of a candidate who contends that his record was not correctly read. It is contended that wrong appreciation of record of a candidate could not be made a ground for review. It was not a case where adverse entries in the confidential reports were expunged or toned down or a punishment inflicted on the candidate was set aside or reduced. The reasons given by the

State Govt. for holding the review D.P.C. on 13.1.1995 are that Dr. V.D. Maheshwari submitted representation dated 31.12.1993 against the revised promotion orders dated 2.11.1993 issued on the basis of decision of the D.P.C. meeting dated 18.10.1993. In his representation Dr. V.D. Maheshwari was said to have taken a stand that from 1983 to 1988 he had been on deputation with Al Arab Medical University, Benghazi Libiya, where on the basis of Outstanding performance he got promotion in that university. A certificate was issued by the said University which was counter signed by the Ambassador, Libiya. According to Dr. V.D. Maheshwari the said testimony of Outstanding performance should have been considered by the D.P.C. As this was not done he was not considered fit for promotion in merit quota. By his representation dated 12.1.1994 also Dr. V.D. Maheshwari requested for review of the decision of the D.P.C. meeting held on 18.10.1993. Accepting this representation by Dr. V.D. Maheshwari, the State Govt. decided to review the decision of the meeting of the D.P.C. held on 18.10.1993. The State Govt. took a stand that the contingencies catalogued in Sub-para (e) of Rule 24-A were not exhaustive and the State Govt. had power to convene the D.P.C. to review its decision whenever mistake or error was brought to its notice. Since the State Govt. was convinced that Dr. V.D. Maheshwari's case was not properly considered because of non availability of the A.P.A.R.s, the decision of the D.P.C. had to be reviewed. Dr. V.D. Maheshwari has taken a similar stand.

14. A point was sought to be made that second review was not provided by the rules and was not permissible. It is contended that decision of D.P.C. Meeting dated 27.5.1989 having already been subjected to review in D.P.C. meeting dated 18.10.1993 there could be no further review of the decisions taken in the Review D.P.C. meeting dated 18.10.1993 and as such the decisions taken in Review D.P.C. meeting dated 13.1.1995 were unauthorised and ineffective. A perusal of Sub-rule (11-B) of Rule 24-A again would show that there was no express bar to second or subsequent review. An implied bar can also not be inferred from its language. The words used are "the proceedings of the D.P.C. held earlier" and not "the proceedings of the original or initial D.P.C." Reading of words "original" or "initial" D.P.C. in the language is totally unwarranted and impermissible as without the use of these words, the meaning is not understandable or unclear. Moreover, the words "D.P.C held earlier" used in the rule make it very clear that the intention was not to confine the right to review to the first D.P.C. alone barring any subsequent review. It has therefore to be held that review of the proceedings of review D.P.C. was permissible under the rules and proceedings of Review D.P.C. Meeting dated 13.1.1995 cannot be faulted on that ground.

15. The next question is as to whether a review D.P.C. could be ordered at the instance of a candidate or on the basis of a representation received from a candidate who was considered and rejected at the selections by the D.P.C. The plain language of the Sub-rule (11-B) does not provide that a review can not be ordered at the instance of a candidate. Many of the situations in which review

can be ordered are confined to individuals like change in seniority, judgment/direction of Court, expunction or toning down of adverse entries in the confidential record, setting aside or reduction of punishment etc. Such matters will normally be brought to the notice of the authorities by the individual affected persons only. To say that a review can only be ordered suo motu by the authorities is therefore not proper. Moreover, many an error apparent on the face of record may also be pointed out by affected persons only. Promotion is an individual benefit and the Government is not or should not normally be interested in individual candidates. There is therefore nothing wrong in the Government acting in such a matter at the instance of an affected individual. Not accepting this would lead to an inevitable result that such an affected person will have to approach a Court of law for an order or direction to the Government to hold a review D.P.C. meeting and only on such a direction being issued by a Court or Tribunal the review would be possible. If this is the ultimate position why should the Government be not free to accept its error and order review D.P.C. on the representation of an affected employee? I find no force in this objection also.

16. Next contention is that non-consideration or improper consideration of records of individual candidates cannot be a ground of review under Sub-rule 11-B of Rule 24-A. Again a bare perusal of the Sub-Rule would show that the contingencies mentioned therein specifically are not exhaustive but are only illustrative. Certain examples of the reasons which, would be taken as sufficient reasons have been given and not an exclusive list of all reasons which can be taken as sufficient reasons are given. Moreover, a factual error substantially affecting the decision of D.P.C. has been specifically made a ground of review. Non-consideration of record of a candidate while he was on foreign deputation resulting in his rejection would certainly be a factual error affecting the decision of D.P.C. The State Govt. has ordered the review D.P.C. when Shri V.D. Maheshwari pointed out that his record during foreign deputation had been ignored by the D.P.C. The State Government agreed with Dr. V.D. Maheshwari and directed a review D.P.C. to be held. It cannot therefore be said that there was no legal ground for ordering or holding a review D.P.C. meeting. I am therefore of the view that review D.P.C. meeting held on 13.1.1995 was validly ordered to be held.

17. The next question is as to whether Dr. V.D. Maheshwari's record including foreign service record was such as to entitle him for selection in merit quota. A perusal of A.P.A.R.s. of Dr. V.D. Maheshwari which are produced by the State Govt. shows that in the year 1981-82 he has been assessed "Very Good". In the year 1982-83 also he has been assessed "Very Good". In the year 1982-83 also he has been assessed "Very Good". In the year 1983-84 he went on foreign deputation as Lecturer, Department of Medicine, Al-Arab Medical University Benghazi, Libiya from 17.8.1983. He remained on deputation from 17.8.1983 to 31.7.1988. He produced a certificate dated 19.7.1988 from Chairman Arab Medical University, Department of Medicine to the effect that his performance in all spheres of departmental activities had been excellent and his presence had

been as asset to the department. It had also been certified that he was promoted to the post of Assistant Professor w.e.f. 1.7.1987. This record for the years 1983-84, 1984-85, 1985-86, 1986-87 and 1987-88 has been and can be taken as "Very Good" A.P.A.R. for these years. In the year 1988-89 after repatriation Dr. V.D. Maheshwari has submitted his self assessment report but no remarks have been recorded and the Secretary Medical and Health Deptt. Govt. of Rajasthan has remarked "No occasion to see his work". In the year 1989-90 again he has been assessed to be "Very Good". Thus if he has been considered by the D.P.C. to be a candidate having consistently Very Good record, the decision can not be said to be wrong.

18. As a result of all this exercise I have reached a conclusion that only selection of Dr. Raja Babu Panwar could be faulted and all other selections are in order. Dr. Raja Babu Panwar had also not challenged the decision of the Tribunal against him so that it has become final against him. As a result of rejection of the case of Dr. Raja Babu Panwar one seat of the merit quota will be vacated and against that the next candidate under the seniority cum merit quota would be considered and that candidate was Dr. L.K. Bhatnagar. So the result of the D.P.C. meeting dated 18.10.1993 would remain intact except in place of Raja Babu Panwar, Dr. V.D. Maheshwari will be substituted as a third candidate under merit quota and the position of Dr. L.K. Bhatnagar as candidate selected against seniority cum merit quota would also remain intact. The next person in the seniority list would occupy the 5th place in the reserved list.

19. For the aforesaid reasons the petition of Dr. L.K. Bhatnagar is partially allowed. The objection as to maintainability of his petition for having not exhausted the remedy of appeal is over ruled in the circumstances of the case when while deciding cases of other candidates his case was bound to be considered and he was bound to get relief consequential to grant of relief to others. Even otherwise existence of alternative remedy is not an absolute bar to a petition under Article 226 of the Constitution of India. The petition of Dr. P.D. Khandelwal is allowed and the direction of the Tribunal in his case is set aside. The petition filed by the State Govt. is also disposed of accordingly. All directions contrary to this order contained in the impugned order of the Tribunal are set aside.