
(2010) 08 AHC CK 0135
In the Allahabad High Court

Dr. Pushya Mitra Singh Deo

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 16-08-2010

Acts Referred:

Prevention of Corruption Act, 1988 — Section 13(1)(d), 13(2)

Citation : (2010) 08 AHC CK 0135

Hon'ble Judges : Sunil Ambwani, J; Kashi Nath Pandey, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. Heard Shri U.N. Sharma, Senior Advocate assisted by Shri Chandan Sharma for the petitioner. Shri Tarun Varma and Shri Govind Saran have appeared for the respondents. Shri Vivek Misra appears for Shri Lalit Kumar-respondent No. 5.

2. The petitioner is posted as Chief Security Commissioner- Cum-Deputy Inspector General Railway Protection Force, North Central Railway, Allahabad. By this writ petition he has prayed for directions to quash the order dated 19.8.2009 passed by Railway Board appointing 26 J.A. grade Officers of the Railway Protection Force including petitioner at serial No. 21 to be appointed to officiate as DIG grade with effect from the dates mentioned against them to the extent of the date of appointment of the petitioner i.e. 1.7.2005 in the order. He has further prayed for considering the date of his appointment in DIG grade as 19.8.2004 in accordance with the order issued by the Railway Board of the same date including petitioner at serial No. 13.

3. The petitioner has impleaded Shri Lalit Kumar; Shri C. Thamotharan; Shri R.K. Sharma and Shri D. Kholi as party respondents to the writ petition. The notices were issued to them and were sent on 5.5.2010. Shri Lalit Kumar-respondent No. 5 serving as Inspector General-cum-Chief Security Commissioner (RPF), Colaba, Mumbai alone has chosen to file a reply through Shri Vivek Mishra.

4. This Court passed following orders on 1.2.1010:

Heard Sri Shashi Nandan, Senior Advocate and Sri Satish Chaturvedi for the two applicants, namely Chandra Shekhar Ray and Jaya Singh Chauhan, who have made application for being impleaded as respondents No. 5 and 6. A further prayer has been made to direct the respondents to convene the meeting of departmental promotion committee for considering the promotion from the post of Deputy Inspector General to Inspector General.

This Bench after hearing the parties passed an interim order on 17th December, 2009 to the following effect:

After hearing learned Counsel for the parties and perusing the record, we are of the view that as far as transfer or posting of an officer is concerned, the Railway Administration is free to take appropriate decision in accordance with law. However when in the earlier seniority list and in the promotion order, the petitioner was shown to have been promoted on 19th August, 2004 and was shown above the promotee officer, no reason is forthcoming to indicate as to why in the impugned order dated 19th August, 2009 he has been pushed down. In view of the aforesaid, we are of the view that the order dated 19th August, 2009 in so far as the petitioner is concerned deserves to be stayed and is hereby stayed. Interim order dated 16.9.2009 is modified to the above extent.

Sri U.N. Sharma, learned Senior Advocate, appearing for the petitioner submits that petitioner also prays that meeting of the departmental promotion committee be convened for considering the promotion. He further submits that he does not press his interim relief application at this stage.

Sri Shashi Nandan, Senior Advocate, submits that in view of the fact that meeting of the departmental promotion committee is to be convened and there is no restraint order of this Court, Chandra Shekhar Ray and Jaya Singh Chauhan need not be impleaded as respondents.

In view of the stand so taken, the impleadment application is rejected as not pressed. We, however, clarify that the order dated 17th December, 2009, in no manner, restrain the respondents from convening the meeting of departmental promotion committee for considering the promotion from the post of Deputy Inspector General to Inspector General. The interim orders dated 16th September, 2009 and 17th December, 2009, in view of the stand taken by the petitioner, is withdrawn to the extent as indicated above at this stage. Learned Counsel for the parties agree that the writ petition itself may be heard at an early date. We having rejected the application and modified the interim orders dated 16th September, 2009 and 17th December, 2009, let the matter be placed before the regular Bench hearing such matters and this writ petition be not treated as tied up or part heard with this Bench.

List this writ petition before the appropriate Bench in the week commencing 15th February, 2010.

5. Brief facts giving rise to this writ petition are that the petitioner was selected

through Union Public Service Commission and was appointed as Assistant Security Commissioner (Junior Scale) Grade "A" and joined on 18.12.1985. He was promoted as Security Commissioner (Senior Scale) Grade "A" on 20.8.1990 by the order of Deputy Director (Security) Railway Board, New Delhi on adhoc basis and was regularized w.e.f. 18.12.1990 vide order of the Deputy Director (Security), Railway Board, New Delhi on 22.10.1996. He was promoted in the Junior Administrative Grade vide order dated 26.2.1999 and was thereafter promoted as Deputy Inspector General Grade (Scale Rs. 16400-20000) and was posted as Deputy Inspector General-cum-Chief Security Commissioner, North Western Railways, Jaipur where he served from 1984 to January, 2009. He was transferred to Allahabad and posted as Chief Security Commissioner, North Central Railway, Allahabad w.e.f January, 2009.

6. It is stated by Shri U.N. Sharma that the petitioner was promoted in the Deputy Inspector General Grade on the recommendation of the DPC vide order dated 19.8.2004. His date of promotion was, however, changed by the Director (Establishment) Railway Board, New Delhi by order dated 19.8.2009 from 19.8.2004 to 01.7.2005, giving rise to this writ petition. The order of promotion of the petitioner along with 15 persons dated 19.8.2004 issued under the signatures of Director (Establishment) Railway Board on 19.8.2004 shows that the promotees were appointed to officiate for DIG Grade Rs. 16,400-20,000 subject to outcome of the matter No. 3059 of 2003, CAN No. 9241 of 2003 and CAN No. 9430 Union of India v. B. Mohan and Ors. in the High Court of Kolkata and CWP No. 1159/2003 P.K. Agarwal v. Union of India and Ors. in the High Court of Delhi at New Delhi.

7. Shri U.N. Sharma submits that the list was issued on 19.8.2009 in compliance with the directions of the Kolkata High Court dated 19.3.2003 in Writ Petition No. 6880(W) of 1998 (Sri Bhupathi mohan and Ors. v. Union of India and Ors.) by which the dispute of seniority and promotion between two group of officers namely direct recruitee (Group A) and promotee (Group B) was decided. The Kolkata High Court quashed the gradation list dated 13.11.1997 and the orders/ letters dated 13.1.1998 and 29.1.1998 and directed the respondents to prepare a gradation list afresh on the basis of year-wise vacancies and eligibility taking into account the cases of those persons who were eligible in the relevant year. The year-wise consideration was to be undertaken though such persons may have retired and said 32 posts were to be filled up on the basis of year-wise consideration in terms of the policy contained in the letter dated 10.12.1991 modified on 3.8.1992 and explained in Office Memorandum dated 12.10.1998. The Kolkata High Court also directed to assign them seniority and consequential respective promotions to successive posts upward and to re-assign the seniority and date of promotion for upward succession in accordance with the directions contained in H.S. Grewal Vs. Union of India (UOI) and Others, A Division Bench of the Kolkata High Court confirmed the judgment of learned Single Judge on 24.11.2006 and consequently a fresh seniority list was prepared and circulated on 2.4.2009 in which the name of the petitioner was at serial No. 49 and his date

of appointment was shown as 18.12.1985 on the basis of this seniority list.

8. It is stated that vide order dated 1.5.2009 regular appointment/promotion to the rank of Security Commissioner was made in Senior Scale on the basis of list dated 2.4.2009. In this list dated 1.5.2009 the petitioner was placed at serial No. 44 and his date of appointment as Security Commissioner was shown as 18.12.1990 and thereafter by the order dated 21.7.2009 the seniority list of Junior Administrative grade was issued in which petitioner's name was placed at serial No. 24 giving date of his promotion in Junior Administrative Grade as 1.7.1999. On the basis of this order dated 21.7.2009 showing the petitioner's date of promotion in Junior Administrative Grade as 1.7.1999 the impugned order was passed whereby the date of promotion of the petitioner in Deputy Inspector General Grade has been shown as 1.7.2005.

9. Shri U.N. Sharma submits that the impugned order dated 19.9.2008 is purportedly passed in compliance with the judgment of Kolkata High Court dated 19.3.2003 without complying with the directions namely for inviting objections before issuing seniority list and its publication. The petitioner's date of promotion in Deputy Inspector General Grade has been wrongly shown as 1.7.2005 as against 19.8.2004 to his detriment. Without giving him an opportunity of hearing the DPC was convened in the year 2004 for promotion to Deputy Inspector General Grade. The petitioner was found fit by the DPC, in pursuance to the impugned order dated 19.8.2009 the recommendations in his favour have been brushed out. The petitioner has been deprived of his promotion to the next higher grade to which he became eligible after five years on 19.8.2009. In view of the impugned order the date of petitioner's promotion has been shifted forward by one year.

10. The judgment of the Kolkata High Court dated 24.11.2006 in F.M.A. No. 138 of 2004 R.K. Sharma and Ors. v. Bhupati Mohan and Ors. has been upheld by the Supreme Court on 9.7.2007 with permission to file a SLP and dismissed the Special Leave Petition.

11. Shri U.N. Sharma submits that the decision to shift the date of petitioner's promotion is grossly illegal, arbitrary and is in violation of principles of natural justice. The objections were neither invited nor considered in shifting the date of promotion of the petitioner in Deputy Inspector General Grade from 19.8.2004 to 1.7.2005. The DPC had found him fit in the year 2004. The decision of his promotion in pursuance to the recommendation of DPC has been shifted arbitrarily without any application of mind. The petitioner is functioning as Chief Security Commissioner as Head of Department of Security Branch of North Central Railway Allahabad. On account of the impugned order he has been posted as Additional Chief Security Commissioner and is no longer heading the department which virtually amounts to reduction in rank. The post of Additional Chief Security Commissioner does not enjoy the administrative and disciplinary powers.

12. In the counter affidavit of Shri K.M. Narain, Deputy Chief Personal Officer, North Central Railway, Allahabad filed by Shri Govind Saran, it is stated that the CBI has registered a first information report on 9.10.2009 u/s 13(2) read with 13(1)(d) of Prevention of Corruption Act, 1988 being RC- 4 (A)/2009/ACR IV, New Delhi at P.S. CBI-ACU-IV New Delhi after conducting raid against the petitioner on 13.10.2009. He was found to have disproportionate assets to the tune of Rs. 1, 03, 00, 771/- in his name and in the name of his wife during the period from 18.12.1985 to 31.3.2009.

13. On merits it is stated in the counter affidavit in paragraph-5 as follows:

5. That the reason for the change in date of promotion to JA grade in respect of the petitioner from 19.8.2004 to 1.7.2005 is the revision in the seniority list of Railway Protection Force Officers vide Railway Board's letter No. E (O)1-97/SR/6/56 dated 2.4.2009. A copy of this seniority list has already been filed as Annexure No. 10 to the writ petition. It was because of revision of the seniority list that review petitions for promotions already made to the higher grades in respect of these officers had to be held and the earlier dates got revised/changed accordingly. It will be seen that the order dated 19.8.2009 contains the names of 26 officers in whose case their dates of promotion to JA Grade have undergone changes. Therefore, it is not only the petitioner whose date of promotion to JA grade has undergone a change.

While framing year-wise panels, eligibility of officers for consideration in the particular panel year as per their revised seniority position in their existing grade, availability of vacancies in the particular panel year and performances of officers as reflected in the crucial 05 years period as required for the particular panel year are taken into account, resulting in change in date of promotion of officers to next higher Grade on any date other than the dates worked out by officers with their own calculation

14. Shri Tarun Varma also appearing for respondent Nos. 2, 3 and 4 submits that the seniority list of Junior Scale Grade A was challenged by the persons aggrieved by filing SLP in Supreme Court against the judgment of Kolkata High Court in Bhupati Mohan's case. The Supreme Court has dismissed the SLP after which the implementation of the judgment of Kolkata High Court started from Junior Scale onwards to Senior Scale, J.A. Grade and thereafter DIG Grade leaving to the impugned order dated 19.8.2009. He submits that by the order dated 19.8.2004 the petitioner was given promotion to officiate in DIG Grade. He was not substantively promoted. His officiating position has undergone change by the order dated 19.7.2009 revising the date of his appointment in DIG Grade on 1.7.2005 in pursuance to judgment of the Kolkata High Court and the Delhi High Court in P.K. Agrawal's case.

15. Shri Varma further states that even if the petitioner's officiating promotion is restored, he will rank junior to the four officers namely, Lalit Kumar; C. Thamotharan, R.K. Sharma and D. Kholi as all of them have been assigned on

1.7.2004 as the date of promotion in DIG rank. It is further submitted by Shri Varma that the procedure of promotion to Administrative Grade is given in Railway Board's Circular Letter dated 3.6.2002. According to this procedure the petitioner could not get promotion to the rank of DIG in the year 2004 while conducting year-wise DPC on merit. His position in the seniority list, however, was not changed. The list dated 19.8.2009 was based on the recommendation of the DPC. According to Kolkata High Court the DPC was not required to be guided merely by grading in the ACRs but was also required to make its own assessment on the basis of the entries of the ACR including various parameters and attributes. The DPC was also required to take into account whether the officer has been awarded any major or minor penalty. Accordingly review DPC was held and that though in pursuance to which the petitioner's initial promotion in Grade A Junior Scale was not disturbed but that he was required to be considered for promotion whenever his term comes up as per seniority. The petitioner's appointment in DIG rank on 19.8.2004 was not by way of substantive appointment. The respondents have only carried out the orders of the Kolkata High Court which has been affirmed by the Supreme Court and thus no interference is required to be made.

16. We have considered the respective submissions, and find that petitioner's promotion was on officiating basis. He did not acquire any right to be promoted w.e.f. 19.4.2004. The Kolkata High Court gave directions allowing the DPC to make its own assessment. The promotion was not based only on the gradings given to ACRs but also the assessment of the DPC on such ACRs. The judgment has been upheld by the Supreme Court and that consequential orders were passed revising the decisions taken by DPC, beginning from the junior cadres upward. As a result of revision of seniority list, the date of petitioner's officiating promotion was changed from 19.8.2004 to 1.7.2005.

17. We also find substance in the contention of Shri Tarun Varma that the petitioner has not suffered any loss, and did not acquire on cause of action to challenge the order by shifting his official promotion from 19.8.2004 to 1.7.2005. He will not be superseded by any officers junior to him. He will continue to be junior to respondent Nos. 5, 6, 7 and 8, as all of them have been assigned 1.7.2004 as the date of promotion to DIG rank.

18. The consequence of re-assignment of seniority in pursuance to the order of the Kolkata High Court upheld by the Supreme Court, namely that the petitioner has been given the rank of Additional Chief Security Commissioner, and the consequential shifting of the date of his next promotion to be considered after completing five years, do not suffer from any illegality on which the orders passed by the respondents in compliance with the judgment of the Kolkata High Court, can be questioned nor any interference can be made on that ground.

19. The writ petition is dismissed. Dt.16.8.2010