
(2004) 03 PAT CK 0112
In the Patna High Court
Case No : C.W.J.C. No. 3793 of 2000

Har Ravinder Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 12-03-2004

Acts Referred:

Citation : (2004) 03 PAT CK 0112

Final Decision : Dismissed

Judgement

1. The Petitioner has filed the present writ application challenging the order dated 1.2.2000, passed by the Central Administrative Tribunal, Patna Bench, Patna, in O.A. No. 284 of 1992, dismissing the application filed by the Petitioner for quashing the order dated 8.5.1992 circulated vide memorandum dated 17.5.1991 (Annexure 8), of the Director General, All India Radio, whereby certain officers were granted Selection Grade in the scale of pay of Rs. 4,500/- to Rs. 5,700/- in the cadre of the Junior Administrative Grade of India Broadcasting (Engineers) Service with effect from 1.7.1986. 1.7.1987, 1.7.1988, 1.7.1989 and 1.7.1990 and to quash memorandum dated 22.11.1991. issued by the office of the Director General, All India Radio (Annexure 11) rejecting the representations of the Petitioner for denying promotion to the said post and granting promotion of his juniors. At this stage, it is to be stated that the grievance of the Petitioner with regard to the order dated 8.5.1991 is regarding grant of promotion to one Shri D.N. Sharma, junior to him, with effect from 1.7.1987 and promotion to other junior officers granted from that date onwards till 1.7.1990.

2. Factual matrix for disposal of the present writ application are that the Petitioner obtained the degree of Bachelor of Engineering in 1970 in the discipline of Electronics and Communication from the Rurhki University and on 12.7.1971, he was appointed as an Assistant Station Engineer in Junior Time Scale, Group-A in All India Radio, Bikaner on probation and on completion of the period of probation, he was declared quasi permanent with effect from 12.7.1974. He was promoted as Station Engineer (a post in the Senior Time

Scale) with effect from 26.9.1981. Thereafter, he was promoted on provisional basis on the post of Superintending Engineer - a post in Junior Administrative Grade with effect from 30.1.1986. D.N. Sharma was placed below him as the Petitioner's placement was at serial No. 13, whereas he was placed at serial No. 15.

3. The President of India, in exercise of powers conferred by proviso to Article 309 of the Constitution of India, framed Rules; known as Indian Broadcasting (Engineers) Service Rules, 1981. Sub-rule (4) of Rule 7 of the said Rule provides that the selection of officers for promotion to the posts in the Senior Scale and Junior Administrative Grade (Selection Grade) shall be in the order of seniority subject to rejection of the unfit, on the recommendations of the Departmental Promotion Committee (for short "the DPC") constituted in accordance with Schedule IV. The said Rule further provides that the selection of officers for promotion to other posts shall be made by selection on merit. Junior Administrative Grade (Selection Grade) in Group-A is a non-functional grade"and after recommendation of the Fourth Pay Commission Report regarding Selection Grade post for Group-A Central Services, the Government issued office memorandums on different dates. According to office memorandum dated 14.8.1987 (Annexure 4), Selection Grade Post has

been limited to the extent of 15% of the Senior Duty Posts (i.e. all duty posts at the level of Senior"Time Scale and above in the cadre). It has also been provided in the said memorandum that no member of the service would be eligible for appointment to the Selection Grade until he has entered the fourteenth year of service on the 1st of July of the year calculated from the year following the year of examination on the basis of which the member was recruited. Paragraph 8 thereof provides that the said order would be effective from 1.1.1986. On 9.12.1987. another memorandum clarifying the earlier memorandum was issued and in paragraph 3 thereof, it has been stated that the Selection Grade in Group-A Central Services is a "Non-functional Selection Grade" and appointment to Selection Grade may be made according to seniority based on suitability taking into account the factors, namely, (a) over all performance; (b) experience; and (c) any other related matter (Annexure 5). Again clarification was issued by another memorandum dated 6.7.1988 (Annexure 6) that the selection was strictly to be made according to seniority based on suitability. Again instruction was issued on 9.10.1989 under the signature of the. Director (PP), providing that for appointment to the Selection Grade in Group-A Services, the Internal Committee would consider the last five ACRs of the officers and that the Committee would satisfy itself that the over all performance of the officer was good and that he has at least two "Very Good" gradings in the last five ACRs, and only such officers would be considered suitable for non-functional selection grade (Annexure 7).

4. Further case of the Petitioner is that from the year 1986 up to the year 1990, no meeting of the Internal Committee was held for the grant of promotion to the

non-functional selection grade. The meeting was held in 1991 and the Committee decided to grant Selection Grade for the year 1986 up to the year 1990 in terms of the executive instructions, including the one issued on 6.7.1988 (Annex. 6) and thereafter, a list of the officers granted Selection Grade was published on 8.5.1991 (Annexure 8), wherein the Petitioner was denied promotion and the persons, junior to him, were granted promotion with effect from 1.7.1987 onwards.

5. The Petitioner has no grievance with regard to promotion to the officers with effect from 1.7.1986 as they were senior to him, but his grievance is with regard to grant of promotion to the officers with effect from 1.7.1987 and onwards. He filed representations against the denial of promotion (Annexures 9 and 10), which were rejected on 22.11.1991 (Annexure 11) and, thereafter, he moved the Central Administrative Tribunal vide O.A. No. 284 of 1992, which has been dismissed by order dated 1.2.2000 (Annexure 12).

6. According to the Petitioner, as per the relevant Rules, the selection is to be made on the basis of seniority-cum-merit, whereas, the authorities, while making selection, have adopted merit-cum-seniority formally on the basis of the instruction issued in the memorandums, which run contrary to the Rules.

7. The stand of the Respondent, on the other hand, is that the case of the Petitioner has been considered in accordance with the Rules by the DPC and Shri D.N. Sharma, junior to the Petitioner," was granted Non-functional Selection Grade with effect from 1.7.1987 on the basis of the recommendations made by the DPC, conducted on 11, 13, 18 and 20th February and 12th March of 1991. Promotion to the said post is not automatic, but on the basis of the selection in terms of the Rules. The persons cannot be granted promotion only on the basis of seniority. The case of the Petitioner was considered along with other eligible officers but he was not found suitable by the DPC. The selection has been done on the basis of merit of eligible candidates with due regard to seniority. The DPC assessed and evaluated the respective ACRs of the eligible officers for the last five years and after taking into consideration all these factors, it did not find the Petitioner fit for promotion.

8. Learned Counsel for the Petitioner submitted that the DPC, while considering the case of promotion, has acted contrary to the Rules as it has considered the question of promotion on the basis of merit-cum-seniority and not seniority-cum-merit, or seniority-cum-fitness. He further submitted that the instructions issued by the Department are contrary and in breach of the Rules framed under the proviso to Article 309 of the Constitution and as such the same should not have been given effect to while considering the case of the Petitioner for promotion.

9. Learned Counsel appearing for the Respondent Union of India, on the other hand, combated both the submissions and submitted that the case of the Petitioner has been considered in terms of the Rules. The instructions are not contrary to the requirement of the Rule as they have supplemented the Rules

and not supplanted the same.

10. From the pleadings as mentioned above, the only question for consideration is as to whether the case of the Petitioner for grant of promotion in Junior Administrative Grade of the Service has been considered in terms of the Rules. Rule 7(4) of the Rules is relevant for consideration in this case, which runs as follows:

7(4) The selection of officers for promotion shall be made by selection on merit, except in the case of promotion to the posts in Senior Scale and Junior Administrative Grade (Selection Grade) which shall be in the order of seniority subject to rejection of the unfit on the recommendations of the Departmental Promotion Committee constituted in accordance with Schedule IV.

After receipt of the Fourth Central Pay Commission's Report, the Ministry of Personnel, Public Grievance and Pensions, Department of Personnel and Training, issued a clarification (Annexure 4) to the effect that the President has been pleased to decide that in all Group-A Central Services, the number of posts in the Selection Grade shall be equal to 15% of the senior duty posts {i.e. all duty posts at the level of Senior Time Scale and above in the Cadre}. Appointment to the Selection Grade and to the posts carrying pay above the Junior Administrative Grade scale of pay in Group-A Central Services shall be made by selection on merit with due regard to seniority. It further provided that the appointment to the Selection Grade shall be made by a Committee to be constituted internally. On 9.12.1987 (Annexure 5), the same Ministry again clarified the position and said that the Selection Grade in Group-A Central Services is a "Nonfunctional Selection Grade" and, accordingly, appointment to Selection Grade may be made according to seniority based on suitability taking into account the factors, namely, (a) over-all performance, (b) experience; and (c) any other related matter. By another memorandum dated 6.7.1988 (Annexure 6), while reiterating the earlier memorandum dated 9.12.1987, it was provided that while making selection of officers for promotion to the Selection Grade, the Selection Committee's minutes should reflect that the overall performance of the officer was good and that there was no adverse entry in the CRs in any case. If there are any cases with adverse entries, it should be clearly brought out in the minutes as to why they are proposed for Selection Grade inspite of the adverse entries. The minutes should also include a certificate that there is no other factor or aspect affecting any officer, which would disqualify him for grant of Selection Grade. Thereafter, the last memorandum came on 9.10.1989 (Annexure 7), whereby superseding earlier memorandums it was provided that an internal committee shall be constituted to review the case of officers for Non-functional Selection Grade and to make suitable recommendations. The committee shall consider the last five ACRs of the officers. It shall accept the final grading given by the Reporting Authority in each ACR unless there are good reasons to depart from that grading. The Committee should also satisfy itself that the overall performance of the officer was good and

that he has at least two "very good" gradings in the last five ACRs. Such an officer would be considered suitable for promotion.

11. According to the Rules, selection has to be made in order of seniority subject to rejection of unfit. No doubt, in the memorandum, as contained in Annexure 4, it was mentioned that the appointment to the Selection Grade and to the posts carrying pay above the Junior Administrative Grade scale of pay in Group-A Central Services shall be made by selection on merit with due regard to the seniority, but that was superseded by another memorandum (Annexure 5) and it was clarified that the selection is to be made according to the seniority based on suitability taking into account the relevant considerations. The instructions issued in the memorandum, thus, are consistent with the Rules and they have laid down only criteria, which have to be adopted for considering the case of promotion on the basis of seniority-cum-merit. Selection for promotion is made by adopting different criteria taking into consideration the requirements of service and nature of the post, or by making provisions with regard to the same, statutory Rules and instructions. Broadly speaking, such promotional criteria fall into three categories, namely, (a) seniority-cum-fitness, (b) seniority-cum-merit and (c) merit-cum-suitability with due regard to seniority. While in a case of seniority-cum-fitness, the selection is made purely on the basis of seniority, subject to rejection of the unfit, further criteria have to be laid down for judging the fitness. In a case of seniority-cum-merit, inter se seniority of the officers, who are eligible for promotions, is considered, which is determined on the basis of the length of service. However, an officer cannot claim promotion as a matter of right by virtue of seniority alone. His case may not be considered if he is found unfit to discharge the duty on higher post. While making promotion on the basis of seniority-cum-merit, the entire service records of the officer have to be looked into and the authority is competent to appraise the performance for finding out minimum standard for promotion to the particular post.

12. In the case of *Sr. Jagathigowda, C.N. and Others Vs. Chairman, Cauvery Gramina Bank and Others*, in paragraph 8, the Apex Court held as follows:

It is settled proposition of law that even while making promotions on the basis of seniority-cum-merit the totality of the service record of the officer concerned has to be taken into consideration. The performance appraisal forms are maintained primarily for the purpose that the same are taken into consideration when the person concerned is considered for promotion to the higher-rank.

13. In a case of merit-cum-seniority, emphasis is on merit and ability and seniority plays a second role. In case of the merit and ability being equal, the seniority has to be given weight. The relevant Rule provides for consideration of the case for promotion on the basis of seniority-cum-merit and according to which the seniority has to be given (sic) weight but for promotion to the said post, the settled law is that the performance can be appraised and the different instructions/memorandums, issued as noticed above, are nothing but the criteria laying down for appraisal of performance for determining promotion on the basis

of seniority-cum-merit.

14. The case of the Petitioner has been considered by a Committee constituted for the said purpose and the Committee, after having considered him and after appraisal of his performance for promotion to the post in question, has found him unfit for promotion. In our view, the Tribunal has rightly held that the Tribunal or this Court in exercise of writ jurisdiction, cannot assume the jurisdiction of the appellate forum with regard to the decision taken by the DPC. Unless it is shown that the DPC has acted contrary to the Rules, or its decision is arbitrary or unjust, this Court cannot interfere with the matter. Thus, the view taken by the Tribunal cannot be held unjust and improper and, in our opinion, the Tribunal has rightly rejected the original application.

15. In the result, we do not find any merit in this writ application and it is, accordingly, dismissed.