
(1995) 07 GAU CK 0030
In the Gauhati High Court
Case No : Civil Rule No. 3210 of 1991

Kashmir Lalnoatay

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 14-07-1995

Acts Referred:

Constitution of India, 1950 — Article 14, 14, 16, 16

Citation : (1995) 2 GLJ 274 : (1996) 3 GLT 10

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

Bench : Single Bench

Advocate : T.C.Khetri, A.Roy, B.Kalita, Advocates appearing for Parties

Judgement

1. The petitioner who has been working in the post of Civilian Officer Grade I, in the Administrative Wing of the Border Roads Organisation has filed this application under Article 226 of the Constitution mainly for a direction on the respondents to make a cadre review of the posts in the Administrative Wing of the Border Roads Organisation and promote the petitioner to a post higher than that of Civilian Officer Grade I, with effect from the date his contemporary officer of the rank of Major as on 28.10.72 was promoted to a higher post and to grant him incidental benefits of such promotion.

2. The facts of the case as stated in the writ petition very briefly are that pursuant to the advertisement published by UPSC in November, 1971, the petitioner was selected and appointed as a Civilian Officer Grade I in the Border Roads Organisation on 28.10.72. After such appointment, the petitioner was posted in rank of Civil Officer, Grade I, in different posts from time to time and as the time of filing of the writ application, the petitioner was posted as an Administrative Officer at HQ 24 BRTF Project Pushpak in Mizoram. The Border Roads Organisation which undertakes the work of improving existing roads and constructing new roads in the border areas comprises of members of the General Reserve Engineering Force (for short the GREF) and Army Officers, and has five wings namely, Executive Wing, Administrative Wing, Medical Wing, Signal Wing

and Postal Service Wing. In the year 1977, by Rules made under Article 309 of the Constitution, a separate cadre Border Roads Engineering Service for all persons working under the Executive Wing was formed, but no such rules were framed creating a separate cadre of persons working in the Administrative Wing of the said organisation. As a result, while the officers working in the Executive Engineering Wing had an opportunity of being promoted to different promotional posts created by such Rules framed in the year 1977, persons working in the Administrative Wing including the petitioner continued to be denied opportunity for promotion in any promotional post.

3. The petitioner drew the attention of the authorities about the necessity of creating a separate cadre for the posts in the Administrative Wing of the organisation and to provide for adequate promotional prospects to the incumbents to the said post. Although, assurances were given by the authorities, no such separate cadre was formed in respect of posts of the Administrative Wing nor any promotional avenue provided in the Administrative Wing. On the other hand, in the year 1983⁸⁴, the cadre of the Border Roads Engineering Service was again reviewed and the pay scales of different grades of Engineers in the said cadre was raised. Aggrieved by such discriminatory treatment of the respondents towards the petitioner and other similar personnel of GREF in matters relating to cadre review and improvement of promotional prospects, the petitioner submitted representations from time to time but no such review was undertaken and no promotional posts were created. Only some posts of Civil Officer Grade I (Selection Grade) were created pursuant to the recommendations of the Pay Commissions. The petitioner's grievance is that while the Engineering and Army personnel of the Border Roads Organisation have advanced in different promotional posts with higher scale of pay, the personnel of the Administrative Wing including the petitioner have remained stagnant in their respective posts without any promotional prospects resulting in great disparity in the service conditions between the Engineering and Army personnel of organisation on the one hand and the personnel of the Administrative Wing of the organisation. This discriminatory treatment has been illustrated by the petitioner by stating that the post of Civilian Officer Grade I held by the petitioner was equivalent to the rank of Major of the Army and to the post of Executive Engineer in the Engineering Service, but while a Major from the Army has after the required years of service advanced in this career to posts of the Lt. Colonel and Colonel, and the Executive Engineer has advanced to the promotional posts of Superintending Engineer and Chief Engineer, the petitioner who is serving as a Civilian Officer, Grade I has stagnated in the said rank of Civil Officer, Grade I for the last two decades. Such discriminatory treatment towards the petitioner and other personnel in the Administrative Wing of the Border Roads Organisation is violative of the fundamental rights to equality of the petitioner guaranteed under Article 14 and 16 of the Constitution.

4. Mr. TC Khetri, learned counsel for the petitioner submitted at the hearing of the Civil Rule that these disparities in the service conditions of officers in GREF

between persons recruited directly into GREF and those appointed from amongst Army personnel came to the notice of the Apex Court in the case of R. Viswan vs. Union of India, AIR 1983 SC 658, and the Apex Court observed that Central Government should consider the advisability of taking steps for removing such disparities in service conditions. Mr. Khetri also cited the judgment of the Supreme Court in the case of Raghunath Prasad Singh vs. Secretary, Home (Police) Department, Govt of Bihar reported in AIR 1988 SC 1033 and the case of Council of Scientific and Industrial Research vs. KGC Bhatt reported in AIR 1989 SC 1972 wherein the Apex Court has observed about the need for providing promotional prospects in any organisation and in the case of Raghunath Prasad Singh has even directed the State of Bihar to provide promotional opportunity to officers in the State Police by appropriate amendment of the rules. Mr. Khetri also relied on the judgment and order dated 4.1.94 in Civil Rule No.543 of 1989 of the learned Single Judge of this Court in which certain directions were given to the respondents to pay some personnel in GREF as per circulars dated 14.12.83 and 1.12.88 of the Government of India. Mr. Khetri stated that the petitioner would be retiring after a year and accordingly a direction should be given to the respondents to create a post of Assistant Director (Personnel and Administrative) in the Border Road Organisation and promote the petitioner with retrospective effect so as to place him in a post equivalent to his counterparts in the armed forces and give him incidental service benefits.

In the returns filed on behalf of the respondent Nos. 1 to 5, the respondents have denied that there is any discrimination between the petitioner and those working in the other wings of the Border Road Organisation. It is stated that the other wings are governed by their own cadre rules and service conditions, but so far as the cadre of Civilian Officers is concerned, it is a temporary cadre and is not an organised cadre. It is further stated in the affidavit in opposition that the petitioner is likely to get his promotion as Civilian Officer I (Selection Grade) in his own turn on the basis of his seniority. In para 19 of the affidavit in opposition filed on behalf of the respondents, it is however stated :

?That the statements made in paragraph 19 of the writ petition is not correct and deponent states that steps have been taken to increase the scope of promotional avenues of GREF personnel/officers. The petitioner has been advised that cadre review of Civilian Officers will be carried out after the same for Mechanical cadre is finalised. It was decided that CO cadre earlier recruited as a temporary cadre and its permanency has to be reviewed. In between it was decided that CO cadre could be winded up. But on humanitarian ground it was decided to still carry out the cadre review to grant relief to the existing officers of the cadre. Petitioner is holding the post of COI, because he has not attained the seniority for being promoted.?

6. On the basis of the aforesaid paragraph 19 of the affidavit in opposition as well as the intimation dated 16.1.91 to petitioner, a copy of which is annexed to the additional affidavit in opposition of the respondents as Annexure A, Mr. B. Kalita,

learned counsel for the respondents submitted that the representation of the petitioner dated 30.5.90 for cadre review in respect of Civilian Officers is still under consideration. Mr. Kalita also submitted that all the decisions cited by Mr. Khetri, learned counsel for the petitioner, do not apply to the facts of the present case.

7. Regarding the grievance of the petitioner relating to discrimination, it is now settled by the Supreme Court in a series of decisions starting from its decision in the case of All India Station Master's Association and Assistant Station Master's Association & others vs. General Manager, Central Railway & others reported in AIR 1960 SC 384 that equality of opportunity in matters of employment including promotion means equality as between members of the same class of employees, and not equality between members of separate and independent classes. In the case of R. Viswan, AIR 1983 SC 658, the Supreme Court has not held that the service conditions of officers in GREF and in particular those relating promotion were discriminatory and violative of Articles 14 and 16 of the Constitution. Similarly, the question of discriminatory promotional avenues in different cadres of personnel working under the Border Roads Organisation was not in issue in Civil Rule 543 of 1989 and was not decided by the judgment and order dated 4.1.94 of this Court in the said Civil Rule. In the present case, therefore, there is no question of discrimination as between the engineering and army personnel of the Border Roads Organisation on the one hand and the personnel of the Civilian Officers cadre of the said organisation in matters of promotion as they belong to separate or distinct cadres or classes of employees even though under the same organisation. Accordingly no directions as such can be given to the respondents to promote the petitioner to post higher than that of Civilian Officers Grade I with retrospective effect from the date his contemporary army officer of the rank of Major was promoted to the higher post and grant him benefits incidental to such promotion.

8. Regarding the grievance of the petitioner that no promotional posts are available for promotion of Civilian Officers, it has been held by the Apex Court in the case State of Haryana vs. Piara Singh reported in AIR 1992 SC 2130 that the power to create posts is that of the executive subject to law made by the appropriate legislature. The respondents have stated that the petitioner would be considered for the post of Civilian Officers Grade I (Selection Grade) created pursuant to the recommendations of the Pay Commission when his turn for such consideration comes on the basis of his seniority. But anyone working in a post for almost twenty years without any opportunity for promotion to a higher post is bound to get frustrated and lose his zeal to work.

In the case of Raghunath Prasad Singh vs. Secretary, Home (Police) Department, State of Bihar, AIR 1988 SC 1033 cited by Mr. Khetri, the Supreme Court emphasised this need for providing opportunity for promotion in the following words :

Reasonable promotional opportunities should be available in every wing of

public service. That generates efficiency in service and fosters the appropriate attitude to grow for achieving excellence in service. In the absence of promotional prospects, the service is bound to degenerate and stagnation kills the desire to serve properly. We would, therefore, direct the State of Bihar to provide at least two promotional opportunities to the officers of the State Police in the wireless organisation within six months from today by appropriate amendments of Rules.? Similarly in the case of Council of Scientific and Industrial Research vs. KGS Bhatt, AIR 1989 SC 1972 the Apex Court observed :

?This is indeed a sad commentary on the appellant's management. It is often said and indeed, adroitly, an organisation public or private does not "hire a hand" but engages or employs a whole man. The person is recruited by an organisation not just for a job, but for a whole career. One must, therefore, be given an opportunity to advance. This is the oldest and most important feature of the free enterprise system. The opportunity for advancement is a requirement for progress of any organisation. It is an incentive for personnel development as well. (See Principles of Personnel Management by Flipo Edwin B.4th Ed. P.246). Every management must provide realistic opportunities for promising employees to move upward. The organisation that fails to develop a satisfactory procedure for promotion is bound to pay a severe penalty in terms of administrative costs, misallocation of personnel, low morale, and ineffectual performance, among both nonmanagerial employees and their supervisors.(See: Personnel Management by Dr. Udai Pareek P.277). There cannot be any modern management much less any career planning, manpower development, management development etc. which is not related to a system of promotions. (See: Management of Personnel in Indian Enterprises by Prof. NN Chatterjee, Chap. 12 P. 128).?

9. There is thus an immediate need to provide promotional prospects for persons working as Civilian Officers in the Border Roads Organisation. The respondents have stated in their affidavit in opposition that it has been decided to carry out the cadre review of the Civilian Officers and grant relief to them, but the matter has been dragged for too long a time. Since such cadre review of the Civilian Officers cadre of the Border Roads Organisation is long over due and the petitioner is about to retire from service within a year, I direct that the respondents shall within a period of 3 months from the date of receipt of a certified copy of this order from the petitioner review the cadre of Civilian Officers in the Border Roads Organisation for the purpose of creating promotional posts for Civilian Officers and within two months thereafter consider the petitioner along with others for promotion to such promotional posts which may be created by the respondents. I further direct that while making such cadre review and granting promotional benefits, the respondents shall also decide as to whether, considering the fact that the Civilian Officers have stagnated in their respective posts for almost two decades, such promotional benefits should be given with retrospective effect. With these directions, the writ petition is disposed of, but there shall be no order as to costs.