

(1978) 03 MP CK 0037

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 701 of 1971

Maresh Chandra Gupta

APPELLANT

Vs

**General Manager, M.P.S.R.T. Corpn., Bairagarh (Bhopal) and
Others**

RESPONDENT

Date of Decision : 30-03-1978

Acts Referred:

Constitution of India, 1950 — Article 12, 16, 16(1), 226
Road Transport Corporations Act, 1950 — Section 12, 14, 3, 34, 34(1)

Citation : (1981) ILR (MP) 275 : (1978) JLJ 473 : (1978) MPLJ 694

Hon'ble Judges : G.P. Singh, J;C.P. Sen, J

Bench : Division Bench

Advocate : Gulab Gupta, for the Appellant; Y.S. Dharmadhikari with Ku. Kanti Rao for Respondent No. 1 and P.S. Nair, for the Respondent

Final Decision : Allowed

Judgement

G.P. Singh, J.

The Petitioner, Maresh Chandra Gupta, is employed as Divisional Manager in Madhya Pradesh State Road Transport Corporation. The Respondents B.K. Dutt and S.P. Shukla were also Divisional Managers. By order dated 30th July 1971, Shukla was promoted temporarily in officiating capacity to the post of Deputy General Manager and posted at Raipur. By the same order, Dutt was transferred and posted to officiate temporarily as Chief Traffic Manager at Head Office, Bairagarh. This order was passed by the General Manager. The Petitioner filed this petition under Article 226 of the Constitution challenging this order on the ground that his case was not considered for the posts of Deputy General Manager and Chief Traffic Manager. During the pendency of this petition, the post of Deputy General Manager, Raipur, was abolished in 1974 and Shukla was reverted to the post of Divisional Manager. However, by another order passed by the General Manager, on 7th May 1977 Shukla was again promoted to the post of Deputy General Manager. The Petitioner then amended the petition to challenge

this order also.

The Petitioner was previously employed in Madhya Bharat Roadways (M.B.R.) which was run as a departmental undertaking of the erstwhile State of Madhya Bharat. Similarly, the Respondents Dutt and Shukla were employed in the Central Provinces Transport Service (C.P.T.S.), which was also run as a departmental undertaking of the former State of Madhya Pradesh. On the reorganisation of the States in 1956 and formation of the new State of Madhya Pradesh from 1st November 1956, both, M.B.R. and C.P.T.S., became departmental undertakings of the new State of Madhya Pradesh. The Madhya Pradesh Road Transport Corporation was established by the State Government u/s 3 of the Road Transport Act, 1950, by order dated 9th May 1962, with effect from 21st May 1962. The services of the staff employed in M.B.R. and C.P.T.S. were transferred to the Corporation from 1st June 1962. The question then arose of integration of the services. The Corporation took opinion on the principles to be applied in question of posts and integration of services from Late Shri T.C. Shrivastava, a retired Judge of the High Court, and after obtaining his opinion, a provisional combined gradation list was published on 11th November 1970, showing the position of the employees as on 31st May 1962. The employees aggrieved were given opportunity to file objections. After disposing of the objections, a final gradation list was published on 15th April 1975. This list also shows the position of the employees as on 31st May 1962.

On 31st May 1962, the Petitioner was Assistant Secretary in the grade of Rs. 250-400 in the General Administration Department. He held this post from 1st February 1952. He was sent from time to time to work as Depot Manager in the Traffic Department to gain experience without affecting his pay and rank. The Petitioner was promoted as Senior Depot Manager by order dated 31st December 1963, in the grade of Rs. 360-700. The Petitioner was thereafter promoted as Divisional Manager from 6th March 1964 in the grade of Rs. 580-950.

On 31st May 1962, Dutt was employed as Senior Transport Officer in the Traffic Department in the grade of Rs. 250-500. He held this post from 1st May 1960. Dutt was then promoted as Senior Depot Manager in the grade of Rs. 360-700. Thereafter he was promoted as Divisional Manager in the grade of Rs. 580-950 on 18th November 1966.

On 31st May 1962, Shukla was employed as Senior Transport Officer in the Traffic Department in the grade of Rs. 250-500. This post he occupied from 1st April 1960. Shukla was promoted as Senior Depot Manager on 31st December 1963 in the grade of Rs. 360-700. He was thereafter promoted as Divisional Manager on 1st May 1965 in the grade of Rs. 580-950.

By order of the General Manager dated 30th July 1961, Dutt was "transferred and posted to officiate temporarily as Chief Traffic Manager at Head Office Bairagarh until further orders". The aforesaid order also transferred and promoted a number of other officers. Clause (2) of this order referred to all these

transfers as promotions and stated that "the above promotions are strictly on the officiating capacity and subject to approval by the Head-quarter Selection Committee". Further, it was stated in Clause (2) that the order was issued with the approval of the Chairman. This order which relates to Dutt is one of the orders in challenge in this petition.

The General Manager submitted a proposal for promotion of Shukla to the post of Divisional Manager in the meeting of the Corporation held on 2nd May 1977. The precis prepared for this purpose is Annexure G-2. The relevant portions from this document are as follows:

2. Shri S.P. Shukla, Divisional Manager, Gwalior, was working as Deputy General Manager till 14-12-1974. Consequent to the abolition of the post of Deputy General Manager, Shri S.P. Shukla was reverted to the post of Divisional Manager vide Board's resolution No. 1549 dated 14-12-1974.

At present two posts of Deputy General Manager in the Technical Department, are lying vacant. It is, therefore, proposed that Shri S.P. Shukla, may be promoted as Deputy General Manager against one of these posts. The performance of Shri Shukla who is presently working as Divisional Manager Gwalior is satisfactory and he is fit for promotion to the above post.

In the meeting held on 2nd May 1977, "the Board approved the proposal subject to the concurrence of the Public Service Commission". Thereafter, the General Manager issued order dated 7th May 1977 by which Shukla was "promoted temporarily on the post of Deputy General Manager" in the pay scale of Rs. 950-1160 with effect from the date of his joining. The order was "subject to his selection by the Public Service Commission". This is the other order which is challenged in this petition.

Section 12 of the Road Transport Corporation Act authorises the Corporation to appoint committees and to delegate its functions to a committee or the Chief Executive Officer or the General Manager or any other officer subject to such conditions and limitations as may be specified in the resolution delegating the functions. Section 14 of the Act provides that every Corporation shall have a Chief Executive Officer or General Manager and a Chief Accounts Officer appointed by the State Government. It further provides that a Corporation may appoint such other officers and servants as it considers necessary for the efficient performance of its functions. The conditions of appointment and service and the scales of pay in respect of the Chief Executive Officer, or General Manager and the Chief Accounts Officer can be prescribed by rules framed u/s 44 of the Act. As regards other officers and servants, the conditions of appointment and service and the scales of pay can be determined by regulations made u/s 45 of the Act. The State Government is also given power u/s 34 to issue directions to the Corporation relating to the recruitment, conditions of service and training of its employees and the wages to be paid to the employees. The directions issued u/s 34 amount to law and have overriding effect and the Corporation

cannot depart from them except with the previous permission of the State Government: See Mysore State Road Transport Corporation Vs. Gopinath Gundachar Char, Ramaswami Ayyangar and Others Vs. State of Tamil Nadu,

The regulations of the Corporation which form volume I of its Manual were made sometime in 1964. Chapter III of the regulations contains general conditions of service of the employees of the Corporation. Regulation 47 in this chapter provides that appointments to various posts in the State Transport shall be made by the competent authority declared as such by the Corporation from time to time for a particular post or class of posts. The expression "competent authority" is defined by Regulation 10 to mean the Corporation or any other authority duly notified to which power is delegated by the Corporation for the purposes of the regulations. At pages 8 and 9 of the Second Volume of the Manual is given a list of competent authorities to whom powers have been delegated by the Corporation by its resolutions. Relevant for our purposes is item No. 4, related to Regulation 47. It provides that for Class I posts the General Manager is the competent authority who is to make the appointment with the prior approval of Chairman and the Board. i.e. the Corporation, on the recommendations of a committee consisting of General Manager, Chief Accounts Officer or his nominee and concerned Head of Department or Divisional Manager.

It appears that the General Manager by letter dated 29th May 1971 made certain proposals to the Government for the method of recruitment to Class I and Class II posts in the Corporation. It was proposed that for Class I posts, the Public Service Commission may be authorised to recommend for recruitment promotion as is done in the case of posts under the Government. For Class II posts, it was proposed that the State Government may appoint a committee headed by the Director of Employment and Training. On this proposal made by the General Manager, the Government issued its letter dated 12th July 1972 by which it directed that the recruitment to Class I and Class II posts in the Corporation should be done through the medium of the Public Service Commission. This direction issued by the Government was considered by the Corporation in its meeting held on 20th August 1975 which passed the following resolution:

The Board approved the proposal but directed that Ad-hoc appointments may be made whenever necessary/warranted by the Competent Authority subject to selection by the Public Service Commission.

From the facts stated above, it becomes clear that the Petitioner Gupta was promoted from 6th March 1964 as Divisional Manager; whereas Respondents Shukla and Dutt were promoted as Divisional Managers in May 1965 and November 1966, respectively. In the cadre of Divisional Managers, the Petitioner is, therefore, senior as against the Respondents because seniority is normally taken from the date of continuous officiation in a particular cadre: [see AIR 1977 251 (SC); S.B. Patwardhan and Another Vs. State of Maharashtra and Others, The learned Counsel for the Respondents has submitted before us that in the final gradation list prepared in accordance with the principles set out by Shri T.C.

Shrivastava, the Petitioner was junior to the Respondents on 31st May 1962 and that his subsequent early promotion cannot give him seniority in the cadre of Divisional Managers. It is also submitted that the Corporation is taking steps for revising the seniority of Divisional Managers in accordance with the final gradation list. It may be assumed that the Corporation is taking steps for revising the seniority of Divisional Managers, but the fact remains that so far their seniority has not been revised. It is also clear that in 1971 when Dutt was appointed as Chief Traffic Manager, there was no question of refixation of the seniority in the cadre of Divisional Managers, because till then the final gradation list had not been prepared. Even on the date when Shukla was promoted to the post of Deputy General Manager the seniority in the cadre of Divisional Managers had not been refixed and no step had been taken in that direction. Since promotions to the higher posts of Chief Traffic Manager and Deputy General Manager were made from the cadre of Divisional Managers, it is unnecessary to see the seniority in the lower cadre and we have essentially to see the seniority of the officers concerned in the cadre of Divisional Managers: [Mervyn Coutindo and Others Vs. Collector of Customs, Bombay and Others, Further, there is no such universal principle that revision of seniority in the lower cadre necessarily results in revision of seniority in the higher cadre: [S.K. Ghosh and Another Vs. Union of India (UOI) and Others, Until the seniority of these officers is refixed in accordance with accepted principles, the Petitioner is senior to the Respondents as Divisional Manager.

12 The learned Counsel for the Respondents argued before us that as the substantive post of the Petitioner was that of Assistant Secretary in the General Administration Department, he could not be appointed Senior Depot Manager in the Traffic Department and that his promotions to the posts of Senior Depot Manager and Divisional Manager were invalid. We do not find any force in this contention. We have earlier stated that although holding the post of Assistant Secretary the Petitioner worked as Depot Manager from time to time and gained experience of that post. No rule or regulation or general principle has been brought to our notice which could have disentitled the Petitioner, who had worked as Depot Manager, to be promoted to the post of Senior Depot Manager and thereafter to the post of Divisional Manager. It may, in this connection, be pointed out that if the contention of the Respondents that the promotion of the Petitioner as Divisional Manager is itself invalid is correct, they should have taken some step to remove him from the post of Divisional Manager. No such step is even under contemplation. Therefore, the argument that the Petitioner's appointment to the post of Divisional Manager was itself invalid cannot be taken seriously and must be negated.

Coming first to the appointment of Dutt to the post of Chief Traffic Manager, it will be seen that this order was passed by the General Manager on 30th July 1971. As earlier stated by us, by this order Dutt was "transferred and posted to officiate temporarily as Chief Traffic Manager at Head Office Bairagarh until further orders". The argument of the learned Counsel for the Respondents is that

the post of Chief Traffic Manager is of the same cadre as the post of Divisional Manager, the only difference being that the person appointed as Chief Traffic Manager gets an allowance and, therefore, the appointment of Dutt as Chief Traffic Manager cannot be regarded as promotion and the Petitioner cannot make any grievance. We do not agree with this contention. The Chief Traffic Manager is the Head of the Traffic Department and controls the Divisional Managers. The post carries higher responsibility and an additional allowance of Rs. 150 per month as special pay. The post of Chief Traffic Manager is, therefore, a higher post than the post of Divisional Manager and the appointment of a Divisional Manager to that post will amount to promotion. Indeed, in Clause (2) of the order dated 30th July 1971 by which Dutt was posted as Chief Traffic Manager, his posting is also referred to as "promotion"

The posting or promotion of Dutt as Chief Traffic Manager was subject to the approval of the Head-quarter Selection Committee. It is admitted before us by the learned Counsel appearing for the Respondents that the order appointing Dutt as Chief Traffic Manager was neither placed for approval before the Head-quarter Selection Committee nor before the Corporation. It is submitted that the Head-quarter Selection Committee was abolished by direction of the State Government issued u/s 34(1) of the Road Transport Corporation Act on 31st August 1971. This order is Annexure R-21. It directs that Selection Committees and Tender Committees constituted by the Corporation, both at the Divisional and State levels, are abolished forthwith. Assuming that the Head-quarter Selection Committee was also abolished, by this order, yet neither the General Manager nor the Chairman, with whose approval the order appointing Dutt was issued, had any authority to appoint a person to the post of Chief Traffic Manager which is a Class I post. We have earlier referred to the delegation relating to Regulation 47 in paragraph 9 above. Even if the Committee mentioned therein had disappeared by the order of the State Government dated 31st August 1971, the appointment of Dutt to the post of Chief Traffic Manager could not be made without the approval of the Board, which means the Corporation. Mere approval of the Chairman was not enough. The proper thing to do was to place the case of Dutt along with other eligible Divisional Managers, including the Petitioner, before the Corporation for selecting a proper person to the post of Chief Traffic Manager. That was not done. The appointment of Dutt to the post of Chief Traffic Manager is thus invalid for two reasons; first, it was not made by a competent authority; and, secondly, it infringes the right of the Petitioner under Article 16 of the Constitution, as the Petitioner's claim for the post of Chief Traffic Manager was not considered. We may add that we have not considered the question whether appointment of Dutt to the post of Chief Traffic Manager was invalid as it was not made on selection by the Public Service Commission, as it was not argued before us.

Article 16(1) of the Constitution guarantees equality of opportunity to all citizens in matters relating to employment or appointment to any office under the State. The Corporation being a statutory Corporation is "the State" as defined in Article

12 of the Constitution: [See Sukhdev Singh, Oil and Natural Gas Commission, Life Insurance Corporation, Industrial Finance Corporation Employees Associations Vs. Bhagat Ram, Association of Clause II. Officers, Shyam Lal, Industrial Finance Corporation, ; Ramaswami Ayyangar and Others Vs. State of Tamil Nadu, . The expression "matters relating to employment or appointment" in Article 16(1) of the Constitution was considered by the Supreme Court in The General Manager, Southern Railway Vs. Rangachari, . It was pointed out in that case that Article 16 cannot be confined to the initial matters prior to the act of employment but includes other matters such as provisions about the salary and periodical increments therein, terms as to leave, gratuity and pension and as to the age of superannuation. It also includes promotion to higher posts. Article 16 is thus broadly construed. Any appointment or employment to a post, which carries a special pay or promotion to a higher post must come within the ambit of the said Article.

Coming to the promotion of Shukla as Deputy General Manager, it will be seen that a precis was prepared by the General Manager for the meeting of the Corporation held on 2nd May 1977 in which the appointment of Shukla as Deputy General Manager was resolved. The precis does not show that any other name was considered for the post of Deputy General Manager. This appointment was subject to the concurrence of the Public Service Commission. No correspondence has been produced before us to show that the cases of all Divisional Managers including that of the Petitioner had been sent for examination to the Public Service Commission for selecting one of them for the appointment to the post of Deputy General Manager. In an additional affidavit filed by the Secretary of the Corporation on 18th March 1978, it has been said that the Chairman of the Public Service Commission came to Bhopal on 16th June 1977 and a statement containing all relevant details including the annual confidential reports was placed before the Chairman who informed the General Manager that he would finalise the recommendations after his return to Indore; but, so far, nothing has been heard from the Public Service Commission. The Petitioner has filed a reply to this affidavit. He has no doubt admitted that the Chairman had come to Bhopal in connection with some work on 16th June 1977, but it is disputed by him that the cases of all the Divisional Managers were placed before the Chairman and that he said that he would send his final recommendations from Indore. The Petitioner says that the Chairman observed that it was not possible for the Public Service Commission to approve the appointment of Shukla and that the proper procedure was to leave the matter of selection solely to the Public Service Commission. The Petitioner further states that no approved minutes of the meeting dated 16th June 1977 are available either in the office of the Public Service Commission or in the office of the Corporation. The learned Counsel appearing for the Corporation did not produce before us any minutes of the meeting. He said that there were some jottings in the file about the meeting; but as they had not yet received the approval of the Chairman of the Public Service Commission, he was not producing them before us. We have earlier stated that

no correspondence on that behalf has also been produced before us. What appears to us is that the Chairman had been to Bhopal in connection with some other matter and the matter relating to the appointment to the post of Deputy General Manager was casually placed before him. There was no regular request made to the Public Service Commission for selecting a person for the post of Deputy General Manager. Be that as it may, it is not necessary for us to go into this question in detail because, for the reasons given below, we are of opinion that the Board had no authority to make even an Ad-Hoc appointment to the post of Deputy General Manager without selection by the Public Service Commission.

We have earlier referred to the letter of the State Government dated 12th July 1972, issued to the General Manager. In this letter, which has been filed before us on 15th March 1978, the State Government made it clear that all appointments to Class I and Class II posts in the Corporation should be made through the medium of the Public Service Commission. The direction of the State Government contained in this letter must be taken to be a direction u/s 34 of the Act. It did not permit the Corporation to appoint officers in Class I and Class II posts subject to subsequent approval of the Public Service Commission. It is true that the Board by its resolution dated 20th August 1975 approved this direction of the State Government with this rider that Ad-Hoc appointments may be made, whenever necessary or warranted by the competent authority, subject to selection by the Public Service Commission. In our opinion, this resolution of the Corporation amounts to a modification of the direction of the State Government u/s 34 of the Act and cannot be held to be valid. If the Corporation wanted that it should have power to make Ad-Hoc appointments to Class I and Class II posts in spite of the aforesaid direction of the State Government, it should have requested the State Government to modify its direction by permitting the Corporation to make Ad-Hoc appointments. As earlier pointed out, the directions of the State Government u/s 34 of the Act have the force of law and no appointment can be valid which is made in violation of such directions except with the previous permission of the State Government. The promotion of Shukla as Deputy General Manager, which was made without selection by the Public Service Commission cannot, therefore, be taken to have been validly made. Further, as already noticed, the Corporation in its meeting only considered the case of Shukla. The cases of other Divisional Managers were not considered for this post. The precis prepared by the General Manager does not refer to any other officer except Shukla. Even the return does not show specifically that cases of the Petitioner and other Divisional Managers were considered by the Corporation when Shukla was promoted. We have earlier stated that the Petitioner is senior in the cadre of Divisional Managers as against the Respondents Dutt and Shukla. The seniority of Divisional Managers has not yet been re-fixed after the preparation of the final gradation list showing the position of the employees on 31st May 1962. The Petitioner must be taken to be senior on the basis of the date of his continuous officiation in the post of Divisional

Manager until his seniority is revised or refixed. However, even assuming that on refixation the Petitioner would become junior to Shukla in the cadre of Divisional Managers, we are of opinion that the Petitioner and other Divisional Managers should have been considered for promotion to the post of Deputy General Manager. It is admitted in the return that the post of Deputy General Manager is a selection post. A selection post does not go on the principle of seniority-cum-merit. The principle applicable to a selection post is merit-cum-seniority, which means that promotion is to be made primarily on merit and seniority is to be regarded when merit of the officers is equal. Therefore, all eligible officers, irrespective of seniority, should be considered for a selection post; at any rate, when their number is not large: *Sant Ram Sharma Vs. State of Rajasthan and Another*, The number of Divisional Managers is hardly eight. It is, therefore, not difficult to consider all the names when the selection post of Deputy General Manager is to be filled up by promotion. In the circumstances, irrespective of any question of seniority, the case of the Petitioner ought to have been considered for promotion to the post of Deputy General Manager. Thus, the order promoting Shukla to the post of Deputy General Manager like the order appointing Dutt to the post of Chief Traffic Manager violates the Petitioner's right under Article 16 of the Constitution and, as earlier pointed out, it is also invalid for the reason that it was not made after selection through the Public Service Commission.

The petition is allowed. The orders appointing Dutt as Chief Traffic Manager and Shukla as Deputy General Manager are quashed. There shall be no order as to costs of this petition. The security amount deposited by the Petitioner shall be refunded to him.