
(2006) 07 DEL CK 0147
In the Delhi High Court
Case No : LPA 160 of 2002

Maj Gen (Dr) B.C. Roy

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 21-07-2006

Acts Referred:

Citation : (2006) 90 DRJ 739

Hon'ble Judges : Mukul Mudgal, J;Dr. S. Muralidhar, J

Bench : Division Bench

Advocate : Arun Bhardwaj, for the Appellant; Jyoti Singh and Ankur Chhibber, for the Respondent

Final Decision : Dismissed

Judgement

S. Muralidhar J.

1. This appeal is directed against the judgment dated 10.01.2002 of the learned Single Judge dismissing the appellant's writ petition CW 7013 of 2001. The writ petition challenged an Office Memorandum dated 6.06.2001 issued by the Government of India, Department of Science and Technology, inviting applications for appointment to the post of Surveyor General of India, Dehradun on deputation or on transfer basis. The petitioner also challenged the interview/selection that took place on 29.10.2001 for appointment to the said post and for a direction that the said post should be filled by promotion. Further the writ petition sought a declaration that the appellant was a substantive Senior Administrative Grade (SAG) Officer in regular post of Additional Surveyor General with equivalent regular army rank of Major General since 26.10.1995 (in supernumerary post for the periods 26.10.1995 to 6.07.1998) to date.

2. During the pendency of the writ petition, respondent No. 5 Dr. Prithvish Nag was appointed as Surveyor General of India by notification dated 5.12.2001. Although Dr. Nag was arrayed as respondent No. 5 in writ petition no relief as such was sought against him.

3. The learned Single Judge, by the impugned order while dismissing the writ petition found that the appellant herein had not been appointed in the post of Additional Surveyor General of India which was the feeder cadre for promotion to the post of Surveyor General of India. The learned Single Judge held that the appellant did not have the requisite number of years in the feeder grade apart from the fact that he was not appointed to the relevant grade to be considered for the post of Surveyor General of India. The learned Single Judge also noted that the appellant was to be superannuated on 30.06.2004.

4. Learned counsel for the appellant submitted as under:

(a) The learned Single Judge was in error in holding that the appellant was not appointed to the post of Additional Surveyor General of India and that, he, Therefore, did not have the requisite eligibility for being considered for promotion to the post of Surveyor General of India. He further contended that by judgment dated 30.07.1998, the Division Bench of High Court of Ad-judicature of Allahabad had, while disposing of certain writ petitions by certain other persons similarly placed as the appellant, directed that those petitioners should be considered for promotion in the SAG, i.e to the post of Additional Surveyor General of India in accordance with the 1989 Rules from the date their juniors have been promoted with all consequential benefits.

(b) That in implementation of this judgment of the Allahabad High Court, an order dated 8.02.2000 was passed making promotions of certain persons including the appellant herein to the SAG. that this order dated 2.08.2000 read with the operative direction contained in the judgment dated 30.07.1998 of the Allahabad High Court should lead to the conclusion that the petitioner was in fact promoted to the SAG and Therefore, to the post of Additional Surveyor General of India.

(c) That this would have to be construed as being retrospective from the date his immediate junior was so promoted and that in this case, it would be from the date that his junior, one Shri Gulab Chaudhary had been appointed in the SAG, i.e., from w.e.f 26.10.1995.

5. In reply, the learned Counsel for the respondent referred to the order dated 02.08.2000 to point out that as far as the appellant herein is concerned, he was only given the SAG Grade under protection clause 3-(c) of Annexure 1 to notification dated 26.05.1989 which published the Survey of India Group "A" Posts Service Rules, 1989. While the appellant did get equivalent rank of Major General, he was not substantively promoted to the rank of Additional Surveyor General. Referring to the nothings on file in relation to appointment of the post of Surveyor General, she submitted that since no eligible officer in the rank of Additional Surveyor General of India was available for consideration for promotion to the post of Surveyor General of India, the department decided to fill up the post by deputation which was the alternate method in the Rules prescribed for the purpose. Consequently in this background, the appellant could

not lay claim to the post of Surveyor General of India and hence the petition was rightly dismissed by the learned Single Judge.

6. The admitted position as regards the method of recruitment to the post of Surveyor General of India under the applicable Rules is that it may be filled up "By promotion failing which by direct recruitment or deputation or transfer to be decided in consultation with the Commission".

7. The further admitted position is that the feeder cadre for the purpose of promotion to the post of Surveyor General of India is the post of the Additional Surveyor General. The essential requirement for consideration for promotion is that the candidate should be a Senior Administrative Grade Officer with three years" regular service in the Grade. The issue here is whether appellant can be said to have been promoted to the post of Additional Surveyor General and from what date?

8. The appellant relied on letter dated 2.08.2000 which was issued pursuant to the judgment dated 30.07.1998 of the High Court of Judicature at Allahabad in Civil Miscellaneous Writ Petitions Nos. 12900 and 24736 of 1996. The appellant herein was not a petitioner in those cases. The petitioners in those cases had prayed for a writ of mandamus to the respondents to consider them for promotion to the post of Additional Surveyor General of India and also to grant the consequential benefits from the date their juniors had been promoted. The High Court there noticed that in 1989, a new set of rules i.e Survey of India (Group A) Service Rules 1989 had been promulgated and that the Army and Civilian cadres were bifurcated and the two streams were assigned fixed quota of vacancies, but provided for promotional avenues were provided for. Since this might have disturbed the promotional avenues of officers in existing integrated seniority list, the interest of such officers who were to be adversely affected by the application of 1989 rules was protected by providing a safeguard in the following manner:

Safeguard for the existing incumbents in the combined Seniority list.

The present incumbents (defense/civil) who are adversely affected on account of bifurcation will be protected by the following provisions:

(a) All those officers (defense/Civil) who would have got promotion on the basis of integrated seniority but who get left out on account of separate seniority, would be covered by creating supernumerary posts (and in addition by granting equivalent acting/substantive army rank in case of defense officers).

(b) There is no wide disparity between the existing officers in the two streams for promotions to a particular level i.e the difference in the year of allotment/seniority of junior-most officers for comparison at each level is not more than 1 year. However, if there is any case of wide disparity, the effected officer(s) would be covered by creating supernumerary posts (and in addition by granting equivalent acting/substantive army rank in case of defense officers).

(c) Other effect defense officers who get superceded by junior civilian officers in the combined lists but are otherwise fit for promotion-not covered under (a) and (b) above-will be granted local rank equivalent to the posts occupied by junior civilian officers. This would not entitled them to any rank pay or other allowance of supernumerary local rank.

9. The Allahabad High Court held that these Rules ought to have been followed and that the petitioners therein had been denied their benefits. Reference was also made to the judgment dated 13.07.1994 of the learned Single Judge of Andhra Pradesh High Court in the writ petition No. 11830 of 1989, copy of which has also been placed before us by the appellant. The Allahabad High Court, on the facts of the cases before it, found that : "Gross discrimination had been meted out to the petitioners and the persons junior to them have been promoted in Senior Administrative Grade. In those circumstances, the Allahabad High Court while allowing the writ petitions directed as follows:

A writ in the nature of mandamus is issued commanding the respondents to consider the petitioners of both the writ petitions for promotion in senior administrative grade, i.e to the post of Additional Surveyor General in accordance with 1989 Rules as well as the observations of this Court mentioned hereinabove, from the date their junior have been promoted with all consequential benefits and grant them equivalent army right expeditiously, may within three months from the date of receipt of a certified copy of this order.

10. Thereafter, it appears that a Department Promotion Committee (DPC) was held as per 1989 Rules and with the approval of Appointments Committee of the Cabinet (ACC), the following order dated 2.08.2000 was passed which reads as under:

02.08.2000 addressed to Lt Gen AK Ahuja, SGI-

Subject: Promotion of Officers in Senior Administrative Grade in Survey of India.

Sir,

I am directed to convey the approval of the Government for promotion of Brig AM Chaturvedi and Brig RN Srivastava in the Senior Administrative Grade of Additional Surveyor General in the pay scale of Rs 18400-22400 in Survey of India under protection clause (a) against supernumerary post with effect from the dates of assumption of charge of the posts and until further order, and notionally with effect from the date of promotion of their junior officer; and grant of supernumerary local rank equivalent to the post occupied by the junior most Civilian officer to Brig M.K. Jain, Brig BC Roy, Brig Amrik Singh, Brig KU Kuthiala and Brig PK Gupta in the SAG under protection clause (c) without entitlement of any rank pay or other allowances of supernumerary local rank. The above promotions are approved subject to the outcome of the Civil Appeals Nos: 6321-22/98 pending in the Supreme Court, CWPs Nos: 785/97 and 2893/99 filed in the High Court of Delhi. The charge assumption reports may be sent to the

Department at an early date.

11. Two facts are clear from the above order. The first is that while Brig AM Chaturvedi and Brig RN Srivastava were promoted under protection clause (a) against supernumerary posts with effect from the date of assumption of charge of the posts and until further order, "notionally with effect from the date of promotion of their junior officers" the five other officers, including the appellant herein (Brig B.C. Roy) were granted "supernumerary local rank equivalent to the post occupied by the junior most Civilian officer" in the Senior Administrative Grade "under protection clause (c) without entitlement of any rank pay or other allowances of supernumerary local rank." Therefore, the appellant herein was not promoted to a substantive post in the SAG grade but was only given supernumerary local rank in terms of clause (c) The second feature is that while Brig AM Chaturvedi and Brig RN Srivastava were promoted in terms of protection clause (a) with effect from date of promotion of the junior officers, there is no such retrospective application of the said clause (a) in so far as the appellant herein was concerned. Therefore, for all purposes, the appellant herein was given the supernumerary local rank equivalent to the post occupied by the junior most Civilian officer with effect from 2.08.2000.

12. The above order was followed by a notification dated 10.11.2000 notifying the appointment of Brig AM Chaturvedi and Brig RN Srivastava to the post of Additional Surveyor General. A separate letter dated 18.04.2001 was issued in respect of the grant of local rank of Major General to five officers including the appellant. These documents have been placed on record by the appellant. The counsel for the appellant, on instructions, submitted that he was not aggrieved by the order dated 2.08.2000 or the subsequent orders referred to hereinabove. Obviously, the said order had been served on the appellant. He, however, maintains that the said order dated 2.08.2000 had to be read Along with the Allahabad High Court judgment dated 30.07.1998 and if so read could entitle the petitioner to be considered as having been promoted to the rank of SAG (Additional Surveyor General of India) with effect from the date his juniors have been promoted i.e from 26.10.1995 when Shri Gulab Chaudhary had been promoted.

13. We are unable to agree. The order dated 2.08.2000 very clearly brings out the distinction between two of the officers (Brig AM Chaturvedi and Brig RN Srivastava) on the one hand and the five others (including the appellant), who were only given supernumerary local rank, on the other. The order also is clear that the grant of such supernumerary local rank is not retrospective and this gets further confirmed by letter dated 18.04.2001 referred to hereinabove. Having accepted the letter dated 2.08.2000 as having been correctly issued, the appellant cannot seek to contend that it should be interpreted as having retrospective operation when plainly it does not. The appellant did not challenge this order and must take its consequences.

14. The upshot of the above narration is that the appellant was never appointed

to the post of Additional Surveyor General by the order dated 2.08.2000 but was only granted supernumerary local rank of Major General. Secondly, this also was effective on 2.08.2000. Even assuming that the grant of the rank of Major General should itself be construed as the promotion of the appellant to the Senior Administrative Grade as contended by him, the appellant still would not have the minimum three years qualifying service in that post to be considered eligible for the post of Surveyor General of India on the relevant date i.e 29.10.2001. Thus, in any view of the matter, the appellant could not have laid claim to the post of Surveyor General of India. The decision taken by the respondent on 13.10.2000 in this regard is correct and is in consonance with the 1989 Rules.

15. In this view of the matter, we do not find any ground having been made out to interfere with the well-reasoned order of the learned Single Judge which we hereby affirm. The appeal is, accordingly, dismissed with no orders as to costs.