
(2009) 03 PAT CK 0016
In the Patna High Court
Case No : CWJC No. 3754 of 2000

Mithilesh Prasad and Another	Vs	APPELLANT
The Central Administrative Tribunal, Patna Bench and Others		RESPONDENT

Date of Decision : 02-03-2009

Acts Referred:

Citation : (2009) 2 PLJR 603

Hon'ble Judges : Shiva Kirti Singh, J;J.N. Singh, J

Bench : Division Bench

Advocate : Amit Shrivastava and Girish Pandey, for the Appellant; Sarvadeo Singh for Respondent Nos. 1 to 5 and Mr. Jyoti Saran, for the Respondent

Final Decision : Allowed

Judgement

1. Heard learned counsel for the petitioners, learned counsel for the private respondent and learned counsel appearing for the Union of India. Petitioners alongwith four others had filed O.A. No. 517 of 1993 before the Central Administrative Tribunal, Patna Bench. Patna, hereinafter referred to as "the Tribunal", to challenge order dated 29.2.1988 promoting the private respondent Jitendra Kumar Lal Karn to the cadre of Junior Supervisor. Data Processing Division in the Directorate of Census Operations. Bihar and also seniority list of Junior Supervisors as on 1.6.1992 to the extent the aforesaid private respondent was shown senior to the six applicants.

2. The relevant facts are not in dispute. The applicants before the Tribunal were admittedly senior to the private respondent in the post of Operators. In the Departmental Promotion Committee meeting on 28.2.1988 all the applicants and the private respondent were considered against a total number of ten vacancies including mere in Scheduled Caste and Scheduled Tribe category. The zone of consideration, as per the prescribed guidelines, which has been annexed as Annexures-5 and 5/ A, permitted candidates, three times the number of vacancies to be called for selection. The final grade awarded by the Departmental Promotion Committee to the six applicants including two petitioners herein was

"Very Good" and the grade awarded to the private respondent was "Excellent". As a result of final grading all the applicants and the private respondent got promoted to the post of Junior Supervisor on the same date. Parties are in agreement that the post of Junior Supervisor is a Grade-C post.

3. It is not in dispute that the challenge to the promotion of private respondent as well as his seniority was made in the year 1993 when the applicants found from the gradation list of 1.6.1992 that he has been placed above them in the seniority list. The Tribunal did not accept the plea of limitation advanced by the respondents and decided the claim of the applicants on merit and rejected the same by judgment and order dated 6.12.1999 which has been challenged through the present writ application. That order contained in Annexure-1, in our view, has correctly decided the issue that the respondents committed no mistake in calling the candidates three times the number of total vacancies which was ten. There was no requirement of excluding the vacancies of Scheduled Castes and Scheduled Tribes for the purpose of deciding the zone of consideration.

4. So far as issue of seniority is concerned, in paragraph 4 of the impugned order, which is rather a long paragraph, the Tribunal has held that placement of private respondent at serial No. 1 in the select list on account of his being given outstanding grade was correct and as per prescribed rules and regulations. No rule and regulation to justify such action was however noticed by the Tribunal.

5. Before this Court, the parties are in agreement that the relevant guidelines or regulations are contained in Annexure-11 series and reflected by Government of India, Department of Personnel and Training, Ministry of Personnel, Public Grievances and Pensions Office Memorandum dated 10th March, 1989 which is said to be in line with similar earlier guidelines. A perusal of the relevant paragraph bearing 2.3.1 (i) of that Office Memorandum gives to us an altogether different picture. According to the said provision, for all Group-C posts the bench mark for promotion is "Good". All officers whose overall grading is equal to or better than the bench mark should be included in the panel for promotion to the extent of number of vacancies. They will be arranged in the order of their inter se seniority in the lower category without reference to the overall grading obtained by each of them provided that each one of them has the bench mark of "Good". The later guidelines relate to posts of other groups. No rule or regulation or even a guideline has been produced before us by the private respondent or the Union of India to justify the action of the Departmental Promotion Committee in placing the private respondent above the applicants only on the basis of "Excellent" grading granted to the private respondent. This "Excellent" grading has been misread by the Tribunal as "Outstanding", which is approved grading as per Office Memorandum. Such arrangement of successful candidates only on account of their overall grading and disregarding their inter se seniority in the lower category is clearly against the provisions in Annexure-11, the Office Memorandum dated 10th March, 1989.

6. Thus, we find no rules or regulations to justify the action of the respondent

authorities in disregarding inter se seniority between the applicants and the private respondent on the promotional post of Junior Supervisor. As noticed above, the provision in the prescribed procedure to be observed by the Departmental Promotion Committee, in the Office Memorandum noted above, is to the contrary. We are in agreement with the submissions advanced on behalf of the petitioners that even where promotions are required to be made on the basis of merit-cum-seniority, the promoted candidates are usually permitted to maintain their inter se seniority if they are promoted in the same transaction. We find no contrary rule in the present case to permit disregard of general rule of maintaining inter se seniority of lower category even on the promoted posts.

7. In view of the aforesaid discussions and findings, the writ petition is allowed to the extent that the seniority granted to the private respondent over and above the applicants in the post of Junior Supervisor is held to be against law. The gradation list which was challenged by the applicants before the Tribunal is quashed only to that extent with a direction to correct the gradation list so as to show the applicants senior to the private respondent on the post of Junior supervisor. We clarify here that in the present writ petition we have not been called upon to decide the validity of any future promotion etc. granted to any party. In the facts of the case, there shall be no order as to costs.