
(2003) 03 KAR CK 0082

In the Karnataka High Court

Case No : Writ Appeal No"s. 3697 to 3712 of 2000

M.N. Nagaraja

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 11-03-2003

Acts Referred:

Karnataka Civil Services Rules, 1974 — Rule 32

Citation : (2003) 5 KarLJ 70

Hon'ble Judges : S.R. Nayak, J;K. Ramanna, J

Bench : Division Bench

Advocate : P.S. Rajagopal and S. Narayana Murthy, for the Appellant; B.N. Prasad, High Court Government Pleader for Respondent-1, M.H. Motagi, for Respondents-2 to 5 and 19, K.T. Mohan, for Respondent-3, M. Narayana Swamy, for Respondents-6 and 8, M. Vasudeva Rao, for Respondents-7, 13, 20 and 21, Raghavendra Achar, for Respondent-9, T.R. Sridhar, for Respondents-10, 14, 15, 17 and 18, H.R.S. Rao, for Respondents-11, 12 and 16 and C.R. Goulay, for Respondent-22, for the Respondent

Final Decision : Allowed

Judgement

S.R. Nayak, J.—These writ appeals are directed against the common judgment of the learned Single Judge of this Court dated 29th February, 2000 in Writ Petition Nos. 39545 of 1995, 9991 to 9993, 11906 to 11910 and 10148 to 10151 of 1998, 20367 of 1997 and 11876 of 1999. The appellant is the writ petitioner in Writ Petition No. 39545 of 1995, 3rd respondent in Writ Petition Nos. 9991 to 9993, 10148 to 10151 of 1998, 20367 of 1997 and 11876 of 1999 and 4th respondent in Writ Petition Nos. 11906 to 11910 of 1998. The appellant herein filed Writ Petition No. 39545 of 1995 praying for certain reliefs including for a writ of mandamus that he is entitled to be promoted to the post of Assistant Executive Engineer with effect from the date on which he was placed in charge of the post of Assistant Executive Engineer together with all benefits, pecuniary and otherwise. All other writ petitions were filed by the officers in the cadre of Assistant Executive Engineer calling in question the validity of the final seniority

list of the Assistant Executive Engineers, dated 18-3-1998 whereunder the appellant was placed at Sl. No. 6, that is to say, above the writ petitioners in other writ petitions. The learned Single Judge by the common order under appeal has dismissed the writ petition filed by the appellant, whereas, he has allowed the writ petitions filed by the contesting respondents, and directed the respondent-Board to undertake the exercise to redo the final seniority list and the promotions made on the basis of such list.

2. Although voluminous pleadings and documents are placed before the Court, a short and simple question that arises in these writ appeals is whether an Assistant Executive Engineer can be denied promotion to the cadre of Executive Engineer solely on the ground that he was a Diploma holder at the time of joining the service of the Bangalore Water Supply, Sanitary and Sewerage Board (for short, "the Board") and acquired the degree in Engineering while in service of the Board. This question need not detain the Court for long in view of the undisputed facts we presently state here below.

3. The appellant joined the service of the Board as Junior Engineer on 23-8-1965. At the time of entry into service, the appellant was only a Diploma holder. Subsequently, the appellant acquired B.E. degree in Engineering in the month of May 1985 as in-service candidate. The appellant was promoted to the post of Assistant Executive Engineer under Rule 32 of the Karnataka Civil Services Rules with effect from 21-9-1978. Subsequently, the appellant and the contesting respondents were promoted on regular basis to the post of Assistant Executive Engineer on 24-7-1982. The next promotional post under the Cadre and Recruitment Rules from the post of Assistant Executive Engineer is the post of Executive Engineer. The Cadre and Recruitment Rules governing recruitment to the post of Executive Engineer reads as follows.--

"Sl. No. Post Engineering Mode of appointment Minimum qualification and experience Upper age limit Probation/ officiating period Appointing authority Remarks

1. XXX XXX XXX XXX XXX XXX X

2. XXX XXX XXX XXX XXX XXX X

3. Executive Engineer, Deputy Chief Engineer/ Water Supply Engineer/ Sanitary Engineer (Rs. 1300-1900) By promotion from the cadre of graduate Assistant Executive Engineers on the basis of seniority-cum-merit or By deputation from Public Works Department from the cadre of Executive Engineer (in case no suitable candidates are available internally) Should possess degree in Engineering or Technology or equivalent qualification, Should have put in at least 4 years service as Assistant Executive Engineer or in equivalent post Preferably experienced in Public Health Engineering

1 year Board

Board"

It is also relevant to refer the Cadre and Recruitment Rules governing the recruitment to the post of Assistant Executive Engineer/Technical Assistant/ Personal Assistant to Executive Engineer/Superintendent, CRS Water Works. It reads as follows.--

"Sl. No. Post Engineering Mode of appointment Minimum qualification and experience Upper age limit Probation/ officiating period Appointing authority Remarks

4. Assistant Executive Engineer/ Technical Assistant/Personal Assistant to Executive Engineer/ Superintendent, CRS Water Works (Rs. 750-1525) 75% by promotion of graduate Assistant Engineers on the basis of seniority-cum-merit 25% by the promotion of Assistant Engineers (Diploma holders), Junior Engineers on the basis of seniority-cum -merit For graduate Assistant Engineers a minimum of 4 years experience as Assistant Engineers For Diploma holders or equivalent qualifications should have put in an aggregate service of 12 years as Assistant Engineer and Junior Engineer or 15 years service as Junior Engineer

1 year

1 year Chairman

Chairman"

4. The contention of the contesting respondents is that, since the appellant did not possess the graduate degree in Engineering at the time of entry into the service of the Board on 23-8-1965, he is ineligible for being considered for promotion to the post of Executive Engineer because, the recruitment rules in an unmistakable terms state that the post of Executive Engineer has to be filled by way of promotion from the cadre of graduate Assistant Executive Engineer and that the appellant could not be regarded as an officer belonging to the cadre of graduate Assistant Executive Engineer within the meaning of that term. That is the precise argument of the learned Counsels who appear for the contesting respondents. On the other hand, it is the contention of Sri P.S. Rajagopal, learned Counsel for the appellant that from the phrase "from the cadre of graduate Assistant Executive Engineers", the only requirement that a candidate should possess in order to be eligible for being considered for the post of Executive Engineer is that he should be in the feeder cadre of Assistant Executive Engineer and that he should be a graduate in Engineering and that is the only reasonable way of construing the phrase, "graduate Assistant Executive Engineer", and if it is so construed, it could be seen that the appellant did possess both the qualifications, official status-wise and qualification-wise, when he was promoted to the post of Assistant Executive Engineer by the office order dated 24-7-1982 along with the contesting respondents.

5. In order to appreciate the rival contentions of the learned Counsels for the parties, it becomes necessary to have a closer look at the Cadre and Recruitment Rules governing the post of Assistant Executive Engineer/Technical Assistant/

Personal Assistant to Executive Engineer/Superintendent, CRS Water Works. It is quite apparent that the post of Assistant Executive Engineer has to be filled up by way of promotion by drawing personnel from two channels/two feeder cadres, viz., (i) graduate Assistant Engineers, (ii) Assistant Engineers (Diploma holders) and Junior Engineers. To fill up the post of Assistant Executive Engineer, a ratio of 75:25 is fixed by the statutory rules between the above noticed two feeder cadres. The contesting respondents were promoted to the post of Assistant Executive Engineer against 75% of posts, whereas the appellant was promoted against 25% posts. Therefore, the primary question is whether the appellant and the contesting respondents having been appointed to the post of Assistant Executive Engineer from two different channels in the ratio prescribed under the Cadre and Recruitment Rules would continue to retain their separate identity in the respective feeder cadre before their appointment to the post of Assistant Executive Engineer for the purpose of further promotion to the post of Executive Engineer or not. The rules themselves speak clearly as well as loudly. The Cadre and Recruitment Rules governing appointment to the post of Executive Engineer or to the post of Assistant Executive Engineer do not, nowhere, speak about continuation of the past identity of the candidates in two feeder cadres for the purpose of further promotion to the post of Executive Engineer. On the other hand, once appointments are made to the post of Assistant Executive Engineer, all those persons who have come to be appointed to that post regardless of their channel from which they came to the said post, would constitute a homogeneous, indivisible class for the purpose of further promotion to the post of Executive Engineer.

6. We do not wish to burden our judgment with case-laws. It is well-settled that, if two or more persons are appointed to a cadre by way of promotion the same day, inter se seniority of the promotees in the promoted cadre should be determined with reference to the length of service put in by each of the promotees in the feeder cadre. This rule does not admit any exception unless the statute otherwise directs. Nothing is placed before us or shown to us that this well-settled principle cannot be applied in the instant case. If that is the position, since the appellant-petitioner and the contesting respondents were promoted to the post of Assistant Executive Engineer on regular basis on 24-7-1982 and since admittedly the appellant joined the service of the Board on 23-8-1965, that is to say, well before the contesting respondents joined the services of the Board in the year 1971 and onwards, it goes without saying that the appellant is entitled to be regarded as senior to the contesting respondents in the feeder cadre of Assistant Executive Engineer for the purpose of further promotion to the post of Executive Engineer. Therefore, the placement given by the Board at Sl. No. 6 in the final seniority list of Assistant Executive Engineers cannot be faulted. The action of the Board is in conformity with the law.

7. In the result and for the foregoing reasons, we allow the writ appeals and set aside the order of the learned Single Judge insofar as it relates to the dismissal of the Writ Petition No. 39545 of 1995 and allow that writ petition. Consequently,

Writ Petition Nos. 9991 to 9993, 11906 to 11910 and 10148 to 10151 of 1998, 20367 of 1997 and 11876 of 1999 are dismissed.

At the time of hearing, it was brought to our notice that, during the pendency of writ petition, the appellant-petitioner was promoted to the post of Executive Engineer with effect from 4-3-1997 and he has been continuing in that post. Sri P.S. Rajagopal also told us that certain juniors of the appellant were further promoted to the posts of Superintendent Engineer and Additional Chief Engineer. Learned Counsel told us that such promotions were made by the Board subject to the result of these writ appeals. In that view of the matter, it becomes imperative for the Board to review all promotions made to the post of Superintendent Engineer and Additional Chief Engineer during the pendency of these proceedings. In that view of the matter, we direct the Board to review all the promotions made to the post of Superintendent Engineer and to the post of Additional Chief Engineer subsequent to the promotion of the appellant-petitioner to the post of Executive Engineer with effect from 4-3-1997 in the light of this judgment, within a period of six weeks from the date of receipt of a copy of this order.

In the peculiar facts and circumstances of these cases, the parties are directed to bear their own costs in these writ appeals.