
(2015) 03 RAJ CK 0149
In the Rajasthan High Court
Case No : Civil Writ Petition No. 5623/2009

Mohan Singh Inda

APPELLANT

Vs

Jodhpur Vidhyut Vitran Nigam Ltd. and Others

RESPONDENT

Date of Decision : 25-03-2015

Acts Referred:

Citation : (2015) 03 RAJ CK 0149

Hon'ble Judges : Sandeep Mehta, J.

Bench : Single Bench

Advocate : Nishant Bora, for the Appellant; Ravi Bhansali, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Sandeep Mehta, J.—Heard learned counsel for the parties.

2. Facts in brief are that the petitioner was appointed as Junior Engineer in the year 1972 in the erstwhile Rajasthan State Electricity Board (RSEB). He was thereafter promoted to the post of Assistant Engineer in the year 1987. While being posted at Bhinmal, the petitioner was served with a charge-sheet dated 5.6.1991 under Rule 16 of the Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958. The disciplinary authority held the petitioner guilty by order dated 3.7.1996 and imposed upon him a punishment of withholding three annual grade increments with cumulative effect. The appeal preferred by the petitioner against the said order was rejected vide order dated 3.1.1997. In the year 2000, RSEB was abolished and five new power companies were formed. The petitioner opted for serving in the Jodhpur Vidhyut Vitran Nigam Ltd. (JVVNL). The seniority of the respective employees was retained as in the original RSEB.

3. Being aggrieved of the orders dated 3.7.1996 and 3.1.1997 passed by the disciplinary authority and the appellate authority, the petitioner preferred a S.B. Civil Writ Petition No. 1627/1998 in this Court which came to be allowed by order Annex. P/2 dated 16.3.2009 and this Court quashed both the orders. In

pursuance of the aforesaid decision, the annual grade increments of the petitioner which had been withheld with cumulative effect were released by order Annex. P/5 dated 21.5.2009. Tentative seniority lists of Superintending Engineers and Executive Engineers were published on 1.4.2009. The petitioner claims that he was surprised to find that his name was not placed at the proper position in the seniority list. Hence, the petitioner has approached this Court by way of instant writ petition with a prayer to direct the respondents to accord him proper seniority while ignoring the aforesaid punishment by the effect whereof the petitioner's promotion to the post of Executive Engineer was illegally and unjustly deferred by three years. It is claimed in the writ petition that the petitioner was entitled to be promoted on the post of Executive Engineer in the year 1996 but on account of the punishment so imposed upon the petitioner, his promotion was deferred to the year 1999. In this background, the writ petition has been preferred with the prayers to direct the respondents to hold a review D.P.C. for the purpose of promotion to the post of Executive Engineer in relation to the vacancies arising in the year 1996; to grant promotion to the petitioner before his junior has been so promoted; to hold review D.P.C. for promotion to the post of Superintending Engineer in the year 2008; to give promotion to the petitioner on the said post w.e.f. 30.6.2008; to modify the seniority list dated 30.4.2009 of the Superintending Engineer; to place the petitioner's name at the proper place; and to rectify the seniority list dated 30.4.2009 of the Executive Engineer as well.

4. A reply has been filed by the respondents wherein most of the factual aspects as mentioned in the writ petition are not disputed. However, in para No. 4 of the reply, it has been averred that two other officers namely, Prem Kumar Gupta and Magan Singh Naruka chose to remain in JVVNL when the new power sector companies were formed after the disbanding of RSEB. The aforesaid officers were assigned seniority in the cadre of Executive Engineer on the basis of seniority list finalized by RSEB. Shri P.K. Gupta was promoted on the post of Executive Engineer vide order dated 17.12.1996 whereas Shri M.S. Naruka was promoted vide order dated 4.12.1997. The petitioner was promoted to the post of Executive Engineer vide order dated 28.10.1999. It is noteworthy that the aforesaid two officers, who, though were junior to the petitioner, who were promoted before the petitioner who was under a departmental punishment, have not been impleaded as party respondents in the writ petition. The petitioner has further claimed that Sarva Shri Prem Kumar Gupta, Magan Singh Naruka, Dhanraj Mohnot, Jai Kishan Sharma and Sukhdayal Singh were juniors to him and were assigned higher seniority in the cadre of Executive Engineer. In this regard, it is urged that if the petitioner is given promotion on the post of Executive Engineer in the year 1996, interest of number of officers who were promoted before the petitioner though being junior to him would be affected adversely and since such officers have not been impleaded as party respondents in the writ petition, the same is liable to be dismissed on ground of non-joinder of necessary parties. The respondents have further averred in the reply that the

petitioner was promoted to the post of Superintending Engineer on 1.9.2009 and has been sanctioned voluntary retirement w.e.f. 14.10.2010. After his voluntary retirement, a charge-sheet was issued to him and the same is pending. Further, a matter involving the petitioner is also under investigation by the Anti Corruption Bureau. A resolution taken by the Board of Directors in the meeting held on 27.12.2004 has also been placed on record along with the reply as Annex. R/1. As per point 79.24 of the minutes of the Board, the coordination committee of the Board has taken a decision that the old cases of promotion and seniority shall not be reviewed.

5. Learned counsel for the petitioner contended that as a consequence of the departmental punishment imposed on the petitioner being quashed and set aside by this Court by order dated 16.3.2009, the petitioner is entitled to be promoted from the year of entitlement. He thus urged that a review D.P.C. is required to be held for the year 1996 and proper seniority has to be assigned to the petitioner over and above the junior officers, who were promoted before the petitioner. He further submitted that though the petitioner has been given voluntary retirement, if the prayer for promotion in the year 1996 is accepted, the petitioner would be entitled to receive financial and consequential benefits flowing therefrom. Thus, he urged that the writ petition be allowed in terms prayed for.

6. Per contra, learned counsel for the respondents vehemently opposed the submissions advanced by the petitioner's counsel. He urged that since the petitioner has chosen not to implead the persons whose seniority is likely to be affected upon the prayers made in the writ petition being accepted, as party respondents to the writ petition, the writ petition is liable to be dismissed on account of non-joinder of necessary parties. He, therefore, submitted that the writ petition deserves to be dismissed. He further submitted that the petitioner has not challenged the Board's resolution dated 27.12.2004 wherein a conscious decision was taken not to review the old cases of promotions/seniority and as such, he is not entitled to the relief claimed in the instant writ petition.

7. Heard and considered the arguments advanced at the bar and perused the material available on record.

8. It is not in dispute that the petitioner claims promotion to the post of Executive Engineer from the year 1996. Obviously, at the said period of time, the erstwhile RSEB was in existence and the D.P.C. was conducted by it. If the prayer made by the petitioner to conduct a review D.P.C. for the year 1996 is accepted, then obviously and admittedly, the officers who were promoted in preference to the petitioner whose case was deferred on account of imposition of departmental punishment, are likely to be affected. Therefore, the petitioner was required to implead those persons as respondents in the writ petition whose interest are bound to be affected upon the prayer made in the writ petition being accepted. Therefore, in the opinion of this Court, the prayer made by the petitioner in the instant writ petition that the seniority list should be revised and he should be

assigned seniority from the date his juniors were given promotion is prima-facie unacceptable on the ground of non-joinder of necessary parties. Furthermore, it is admitted that the petitioner sought for and has been granted voluntary retirement in the year 2010 itself. Therefore, the exercise of according seniority to the petitioner from an ante date would only be academic so far as question of seniority is concerned. Thus, the prayer made by the petitioner for modification and revision of the seniority list cannot be accepted for the simple reason that the necessary parties have not been impleaded as respondents. However, prayer for grant of consequential monetary benefits which would accrue to the petitioner in the event of his being promoted to the posts of Executive Engineer and Superintending Engineer from the date his juniors were so promoted, is definitely tenable. The petitioner was denied promotion in the year 1996 solely on the ground of departmental punishment imposed upon him. The said departmental punishment came to be quashed and set aside when the writ petition preferred by the petitioner was allowed by this Court in the year 2009. Resultantly, the petitioner became entitled to the consequential benefits flowing from the order imposing penalty being set aside. It is also not in doubt that the petitioner was given promotion with a deferment of 3 years on account of the order imposing penalty. The said deferment is now not justifiable in view of the fact that the order imposing penalty has since been quashed and set aside. Consequently, while not disturbing the seniority list of Engineers because such a direction would be prejudicial to the rights of the persons who are not party to the writ petition, the petitioner deserves to be notionally promoted from the date his juniors were promoted to the post of Executive Engineer and Superintending Engineer respectively for the purpose of monetary benefits only.

9. Thus, while disposing of the instant writ petition, it is hereby directed that the petitioner shall be given all financial benefits treating him to be entitled to promotion on the post of Executive Engineer and Superintending Engineer by ignoring the order imposing penalty and from the date persons junior to the petitioner were given such benefits. The petitioner shall be paid monetary benefits flowing from the above directions within a period of two months.

10. No order as to costs.