
(2006) 05 AHC CK 0246

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 26798 of 2006

Munni Ram

APPELLANT

Vs

State of U.P. and Nanhe Lal

RESPONDENT

Date of Decision : 23-05-2006

Acts Referred:

Uttar Pradesh Subordinate Excise Service Rules, 1992 — Rule 5, 5(1), 5(3)

Citation : (2006) 7 AWC 7235

Hon'ble Judges : A.P. Sahi, J

Bench : Single Bench

Advocate : K.S. Singh, for the Appellant; C.S.C., for the Respondent

Final Decision : Dismissed

Judgement

A.P. Sahi, J.—This writ petition has been preferred for a direction to the respondent Excise Commissioner to promote the petitioner on the post of Excise Inspector under the reserved schedule caste category, instead of respondent No. 4 Nanhey Lal on the ground that the respondent No. 4 is not entitled to such promotion under the said category as against the claim of the petitioner.

2. The reason for challenge to the promotion of the respondent No. 4 is that he had refused to accept his promotional post of Stenographer grade II and as such having forgone his claim of promotion as Stenographer grade II, he is not entitled to claim promotion as an Excise Inspector keeping in view the order dated 27.9.2001.

3. Sri Kripa Shanker Singh, learned Counsel for the petitioner has relied on the Govt. Order dated 2.12.2000 and the order dated 27.9.2001 wherein it was clearly provided that in case the respondent forgoes his promotion, his future claim for promotion shall not be considered.

4. Respondent Nanhey Lal appears to have given an application on 5.10.2001 that he forgoes his claim of promotion from stenographer grade III to stenographer grade II. This request of the respondent No. 4 was accepted by the

Excise Commissioner vide order dated 13.8.2002. The same situation was there with another stenographer Sri Radhey shayam.

5. A perusal of the Uttar Pradesh Subordinate Excise Service Rules, 1992, would indicate that the post of Excise Inspector has to be filled up in accordance with Rule 5 of the said Rules. Sub-Rule 1 provides that 80% of the posts shall be filled by direct recruitment, 10% of the posts are to be filled up by way of promotion from the Assistant Excise Inspectors and the balance of 10% has to be filled by way of promotion from amongst the senior Assistants Stenographers grade II. Proviso to the Sub-Rule 3 of Rule 5 further indicates that in the event the senior Assistants or Stenographers grade II are not available, or even if available are not eligible for promotion, then the zone of consideration shall stand extended in favour of substantively appointed senior clerks and stenographers grade III, who have completed atleast 10 years of service on the first day of the year of recruitment. It further provides for consideration of such junior clerks as well, who had put in atleast 15 years of service on the first day of the year of recruitment. The said Rule further in the Explanation makes a provision, the manner in which the candidatures of such employees is to be considered. First nine vacancies accordingly shall be offered to in order of the roster indicated therein to the Senior Assistants, Senior Clerks and Junior Clerks and the tenth vacancy shall be offered to the stenographer grade II or grade III as the case may be.

6. A perusal of the said rule, therefore, clearly indicates that in the event the stenographer grade II is not available or is otherwise not eligible then the zone of consideration stands extended to the stenographers grade III as well.

7. Petitioner Munni Ram was promoted in the stenographer grade II on 25.2.2006 and as such he was not eligible for being considered under the Rules as he was not occupying the said post on the first day of the year of recruitment. It is contended that even assuming that the petitioner was still in the grade III on the first day of recruitment, yet he was bound to be considered as against the respondent No. 4, who had already forgone his claim of promotion as indicated herein above. According to the learned Counsel for the petitioner, the respondent No. 4, eventually by his own conduct therefore stood excluded completely from the zone of consideration.

8. In order to appreciate the contention of the learned Counsel for the petitioner, a perusal of the order dated 13.8.2002 would indicate that the respondent No. 4 had forgone his promotion as stenographer grade II. This is also evident from the offer made by the respondent No. 4 on 5.10.2001. The said documents, however, do not indicate that the respondent No. 4 had forgone his claim of promotion to any other post. The surrender by the respondent No. 4 was only with regard to the post of stenographer grade II and did not extend to the post of Excise Inspector. The contention of Sri Krispa Shanker Singh that, once the respondent (sic) had forgone his claim of promotion to stenographer grade II, the respondent No. 4 will be presumed to have surrendered all his rights and claim

for future promotions, including to the post of Excise Inspector, is therefore, not acceptable in view of the clear terms of the aforesaid two documents.

9. A part from this, it is a case of promotion to the post of Excise Inspector. This promotion is a matter of rule and Rule 5 referred to herein above of the 1992 Rules makes a clear provision for extending the zone of consideration in favour of stenographers grade III as well. The said rule of promotion nowhere prohibits the consideration of stenographers grade III, in the event one had forgone his claim for promotion to the post of stenographer grade II. In the absence of any such prohibition in the said rule, the right in favour of the respondent No. 4 for being considered to be promoted as an Excise Inspector cannot be presumed to have been either surrendered or lost. The right of a stenographer continuing in grade III is clearly protected under the said rule. The said rule is nowhere concerned with the promotion on the post of stenographer grade II. The only estoppel which would operate against the respondent No. 4 shall be in respect of the post of stenographer grade II and not in respect of the post of Excise Inspector. The suggestion of Sri Kripa Shanker Singh, therefore, is incorrect and is based on an erroneous understanding of Rule 5 of the 1992 Rules referred to herein above.

10. A part from this, the foregoing of promotion to the post of stenographer grade II by the respondent No. 4 cannot by implication be read as a surrender of rights of claiming promotion to the post of Excise Inspector under Rule 5 referred to herein above. No Statutory provision could be pointed out by Sri Kripa Shanker Singh, which would support the contentions raised on behalf of the petitioner.

11. In such circumstances, the promotion of the respondent No. 4 cannot be interfered with. The writ petition, therefore, lacks merit and is dismissed.