
(1978) 04 MP CK 0002

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 898 of 1973

Nakshatra Singh Dhaliwal

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 27-04-1978

Acts Referred:

Constitution of India, 1950 — Article 226, 309

Citation : (1978) MPLJ 688

Hon'ble Judges : U.N. Bhachawat, J;G.P. Singh, J

Bench : Division Bench

Advocate : V.P. Gldroniya with M.M. Agarwal, for the Appellant; K.L. Issaranl, Govt. Advocate for State, for the Respondent

Final Decision : Allowed

Judgement

G.P. Singh, J.

The Petitioner was appointed Circle Organiser, Tribal and Harijan Welfare Department, with effect from 23rd April 1963. Certain post of Debt Relief Inspectors were advertised. The Petitioner applied for the post of Debt Relief Inspector and was selected. He was appointed Debt Relief Inspector on 20th September 1965. By order, dated 15th May 1973, 62 persons were appointed as officiating Area Organisers/Development Assistants/District Tribal Welfare Assistants in a joint cadre by promotion from the officers working as Circle Organisers, Debt Relief Inspectors and Statistical Assistants. Respondents 7 to 24 were also appointed as Development Assistants by this order. The Petitioner by this petition under Article 226 of the Constitution prays for quashing of the order (Annexure VII), dated 15th May 1973, in so far as it relates to Respondents 7 to 24.

Recruitment to the joint cadre of Area Organisers, District Tribal Welfare Assistants and Development Assistants is governed by the Madhya Pradesh Tribal and Harijan Welfare (Gazetted) Service Recruitment Rules, 1969. These Rules

were made by the Governor of Madhya Pradesh under Article 309 of the Constitution by a Notification, dated 2nd July 1970, published in the Madhya Pradesh Gazette, dated 2nd October 1970. There are three modes of recruitment: (a) by direct recruitment, i.e., by selection and examination; (b) by promotion of members of the service; and (c) by transfer of persons who hold such posts in such services as may be specified in this behalf. In the instant case, we are concerned only with appointments by promotion. We shall, therefore, only refer to those provisions of the Rules which deal with this aspect. Rule 13 provides for Constitution of a Committee for making a preliminary selection for promotion of eligible candidates. Rule 14, which provides for conditions of eligibility for promotion; Rule 15, which deals with preparation of list of suitable officers; Rule 16, which relates to consultation with the Commission; Rule 17, which deals with the preparation of select list and Rule 18, which provides for appointment to the service from the select list, read as follows:

14. Conditions of eligibility for promotion.-The Committee shall consider the cases of all persons who, on the 1st day of January of that year, had completed five years of service (whether officiating or substantive) in the post/service mentioned in column 2 of Schedule IV or any other post or posts declared equivalent thereto by the Government. For promotion to the post of Area Organiser from amongst Debt Relief Inspectors/Research Assistants/Statistical Assistants and Circle Organisers, Tribal Welfare, the completed years of service for considering their eligibility will be as under:

- (i) Debt Relief Inspector/Research Assistants/Statistical Assistants... 5 years
- (ii) Circle Organisers... 7 years

Preparation of list of suitable Officers.-(1) The committee shall prepares list of such persons, if necessary after interviewing them, as satisfy the conditions prescribed in Rule 14 above as are held by the Committee to be suitable for promotion to the service. This list shall be sufficient to cover probable vacancies for two years.

(2) The selection for inclusion in such list shall be based on merit and suitability in all respects, with due regard to seniority.

(3) The names of the Officers included in the list shall be arranged in order of seniority in the (as in column II Schedule IV) Service;

Provided that any junior officer who, in the opinion of the Committee, is of an exceptional merit and suitability, may be assigned in the list a higher place than that of officers senior to him.

(4) The list so prepared shall be reviewed and revised every year.

(5) If in the process of selection, review or revision, it is proposed to supersede any member of the State Subordinate Civil Service, the Committee shall record

its reasons for the proposed supersession.

Consultation with the Commission.-The list prepared in accordance with Rule 15 shall then be forwarded to the Commission by the Government along with-

- (i) The records of all persons included in the list;
- (ii) The records of all members of the service who are proposed to be superseded by the recommendations made in the list;
- (iii) The reasons as recorded by the Committee for the proposed supersession of any member of the Service; and
- (iv) The observations of the Government on the recommendations of the Committee

Select list.-(1) The Commission shall consider the list prepared by the Committee along with the other documents received from the Government and, unless it considers any change necessary, approve the list.

(2) If the Commission considers it necessary to make any change in the list received from the Government, the Commission shall inform the Government of the changes proposed and, after taking into account the comments of the Government may approve the list finally with such modification, if any, as may in its opinion be just and proper.

(3) The list as finally approved by the Commission shall form the select list for promotion of the members of the [as in col. (1), (2), Schedule IV] service to the [as in column (3) of Schedule IV] service.

(4) The select list shall ordinarily be in force until it is reviewed or revised in accordance with Sub-rule (4) of Rule 15:

Provided that in the event of a grave lapse in the conduct of performance of duties on the part of any person included in the select list, a special review of the select list may be made at the instance of the Government and the Commission may, if it thinks fit, remove the name of such person from the select list.

Appointment to the Service from the select list,-(1) Appointments of the Officers included in the select list to posts borne on the cadre of service shall follow the order in which the names of such officers appear in the select list;

Provided that, where administrative exigencies so require, a person whose name is not included in the select list or who is not next in order in the select list may be appointed to the service if the Government is satisfied that the vacancy is not likely to last for more than three months.

(2) It shall not ordinarily be necessary to consult the Commission before appointment of a person whose name is included in the select list to the Service unless during the period intervening between the inclusion of his name in the select list and the date of the proposed appointment there occurs any

deterioration in his work which, in the opinion of the Government is such as to render him unsuitable for appointment to the service.

The relevant portion of Entry No. 9 in Schedule IV to the Rules reads as follows:

Name of Department

Name of service or post from which promotion to be made

Name of service or post to which promotion is to be made

Name of members of the Departmental Promotion Committee (vide Rule 14)

Tribal and Harijan Welfare Department

Circle Organiser/Statistical Assistants/Research Assistants/Debt Relief Inspectors/Auditors

Area Organiser District Tribal Welfare Assistant

Chairman-Chairman of Public Service Commission or his nominee Member-Secretary, Tribal and Harijan Welfare Department.

Member-Director, Tribal Welfare.

A perusal of the relevant rules brings out certain anomalies. The first anomaly that appears to us is that in the Schedule Auditors can also be considered for promotion to a post in the joint cadre. There is, however, no mention of Auditors in Rule 14, which provides for conditions of eligibility for promotion. In case of conflict between a positive statutory provision and matters included in a Schedule, the normal rule is that the positive statutory provision prevails. This question, however, does not arise in the instant case; because, although Auditors were not considered for promotion, no person holding the post of Auditor has come forward to challenge the promotions.

The second anomaly that one finds in the rules is that although Rule 14 provides five years as condition of eligibility for Debt Relief Inspectors, Research Assistants and Statistical Assistants and seven years for Circle Organisers, it does not give any clue as to what should be the condition of eligibility for a person who has been to begin with a Circle Organiser for some years and thereafter a Debt Relief Inspector or Research Assistant or Statistical Assistant. For instance, supposing a person has worked as Circle Organiser for six years and thereafter he has been appointed as Debt Relief Inspector and has worked on that post for one year, will it be possible for him to contend that he has fulfilled the condition of eligibility?

The third anomaly that we find is that although Rule 14 provides for four sources from which candidates may be selected for promotion for a post in the joint cadre it does neither fix any quota for each source nor does it fix any method of finding out inter se seniority of officers coming from different sources. Further, Rule 15 requires preparation of list of suitable officers on the basis of merit and

suitability with due regard to seniority. It also provides that if any junior officer is of an exceptional merit and suitability, he may be assigned higher place in the list. In case of supersession of a senior officer, reasons have also to be recorded. As earlier pointed out, when the rules do not lay down any principle for finding out seniority amongst the officers coming from four different sources, the difficulty arises in practical working of Rule 15. The learned Government Advocate has also not placed before us any instructions of the Government for supplementing the rules from which the above difficulty can be solved. In face of these apparent anomalies, we will try to interpret the rules as best as we can, but we do hope that the Government will take up the question of amending the Rules to remove the anomalies.

In view of the absence of any guideline as to how to co-relate the seniority of officers coming from different sources, the reasonable view to take is that the Committee appointed under Rule 13 will have separate lists of all eligible officers coming from different sources for selection under Rule 15. The Committee shall make the selection from these lists in accordance with merit and suitability. After the eligible persons are all considered for promotion, the Committee shall prepare a list of persons selected in accordance with merit and suitability. But if more than one officer are selected from one source, their names shall be arranged in order of seniority, unless the Committee is of opinion that any junior officer is of exceptional merit and suitability. Similarly, if a senior officer from any list is not selected and a junior officer from that list is selected for promotion, the Committee will record its reasons for the proposed supersession. In our opinion, the criterion of seniority applies to officers selected from the same source. Therefore, Sub-rules (3) and (5) of Rule 15 operate in respect of officers belonging to the same source. They have no application when officers are selected from different sources because, for such officers, the test of seniority cannot be applied in the absence of any common seniority list and any guideline as to how the inter se seniority is to be fixed. Seniority of officers selected from different sources must, therefore, be fixed on the basis of merit and suitability alone. It is only when officers belonging to the same source are selected that their names should be arranged in the list in the order of their seniority and a junior officer can be assigned a higher place in the list only when he is of exceptional merit and suitability. The list prepared in accordance with these principles under Rule 15 by the Committee has to go to the Public Service Commission under Rule 16. The Commission prepares a select list as provided in Rule 17. The appointments are made, as directed by Rule 18, from the Select List in the order in which the names of officers appear in that List. This is the way in which, in our opinion, the Rules should be worked.

In the instant case, the Committee constituted under Rule 13 prepared a Common Gradation List in accordance with the dates of eligibility of officers coming from different sources. After preparing such a list, the Committee considered the suitability of 114 officers and selected from them 75 officers for promotion. It is this list which was approved by the Public Service Commission.

The promotion to the posts in the joint cadre were made according to the list of the Commission. The Petitioner's name was not considered for promotion because his name did not figure in the Combined Gradation list of 114 officers prepared by the Committee in accordance with the dates of their eligibility. In our opinion, the procedure adopted by the Committee was not in accordance with the Rules. As earlier pointed out by us, Rule 15 does not lay down any criterion for preparation of a common gradation list. No such common gradation list, as has been prepared by the Committee, could have been prepared and the selection restricted to the persons figuring in that list. All eligible officers ought to have been considered for promotion and their names arranged in a list in accordance with Rule 15 as explained above.

The Rules, with which we are concerned in the instant case, are almost identical with the corresponding rules in the Madhya Pradesh Employment Service (Gazetted) Recruitment Rules, 1966. A Division Bench of this Court in *D.R. Jhirad v. State of M.P.* 1977 MPLJ 55 considered the said Rules and came to the conclusion that there was no scope for preparation of a common gradation list before selection by the Committee. In that case, the common gradation list was prepared in the order of the length of service of officers coming from different sources. That list was struck down.

We may point out that even on the principle that it is permissible to prepare a common list on the basis of eligibility of the officers, we find that the name of the Petitioner ought to have been included in the common gradation list used for selection under Rule 15 if the name of B.N. Pandey (Respondent No. 16) was rightly included. The Petitioner was appointed Circle Organiser on 23rd April 1963. He was directly recruited as Debt Relief Inspector on 20th September 1965. Respondent No. 16 B.N. Pandey was appointed as Circle Organiser on 19th January 1963 and was directly recruited as Debt Relief Inspector on 6th March 1967. Both of them became eligible for being considered for promotion on the basis that they completed more than 5 years' service as Debt Relief Inspector. The Petitioner being appointed in 1965 became eligible for being considered for promotion earlier to B.N. Pandey. Therefore, if the common gradation list was prepared in accordance with the dates when each officer became eligible for being considered for promotion, the Petitioner's name ought to have been included in the common gradation list and he should have been shown at a place higher than B.N. Pandey. It, therefore, appears that the Petitioner was wrongly excluded from being considered.

The Petitioner was eligible for being considered for selection under Rule 14. In failing to consider the cases of the Petitioner and other eligible persons and in making selection from a common gradation list not contemplated by the Rules, the Committee contravened the Rules and the selection made cannot be held to be valid. The question, however, is whether it would be worthwhile after a lapse of 5 years to set aside the entire selection and to direct the Government to make a fresh selection in accordance with the Rules. In this connection, it is to be

noticed that no other officer except the Petitioner had come forward to challenge the selection. The Petitioner's interest would be safeguarded if the common gradation list is quashed and the Respondents are directed to consider his case for selection and, in case he is selected on the basis of his merit and suitability, to fix his seniority on the footing that his case ought to have been considered for selection in 1973.

The petition is partly allowed. The common gradation list of officers referred to as Annexure I in the proceedings of the Departmental Promotion Committee is quashed. The Respondents are directed to consider the Petitioner for promotion to a post in the joint cadre and, in case he is selected, to fix his seniority on the footing that he ought to have been considered for selection in 1973. There shall be no order as to costs of this petition. The security amount deposited by the Petitioner shall be refunded to him.