
(1990) 03 SC CK 0043

In the Supreme Court Of India

Case No : Civil Appeal No. 1548 of 1990 (Arising out of S.L.P. (C) No. 15284 of 1988)

Nani Gopal Sarkar and others

APPELLANT

Vs

Heavy Engineering Corporation Ltd., and others

RESPONDENT

Date of Decision : 21-03-1990

Acts Referred:

Constitution of India, 1950 — Article 226, 227, 32
Industrial Disputes Act, 1947 — Section 10A

Citation : AIR 1990 SC 1391 : (1991) 61 FLR 105 : (1990) 2 JT 259 : (1990) 2 LLJ 289 : (1990) 1 SCALE 520 : (1990) 3 SCC 173 : (1990) 1 UJ 577 : (1990) 3 UPLBEC 1530

Hon'ble Judges : N. M. Kasliwal, J;K. N. Singh, J

Bench : Division Bench

Final Decision : allowed

Judgement

N.M. Kasliwal, J.—Special leave granted.

2. The appellants have filed this appeal against the judgment of the High Court of Judicature at Patna Ranchi Bench dated 6th September, 1988. The appellants had approached this Court under Article 32 of the Constitution of India for redressing their grievances but on 27th July, 1986 the Writ Petition was withdrawn with liberty to approach the High Court. The appellants thereupon filed a Writ Petition under Articles 226 and 227 of the Constitution of India in the High Court praying for a writ of mandamus directing the Heavy Engineering Corporation Limited (HEC) and its officers to forthwith implement the recommendations of Dr. Binod Kumar and to implement the Circular No. 53/85 dated 14th Oct., 1985 and to prohibit them from giving effect to orders contained in Annexures 6 to 10 and to promote the appellants to the posts of Junior Executives, they, however, did not press their prayer for quashing Annexures 6 to 8 by which the accountants had been promoted to the posts of Junior Executives.

3. Briefly stated the relevant facts are that in view of certain demands of the

employees of the HEC having not been met, they went on strike on 9th August, 1984 which gave rise to an industrial dispute. In order to resolve the dispute, the Labour Commissioner called a joint meeting of the unions of the workers and the management and a settlement was arrived at between the parties on 29th August, 1984. Under the settlement parties agreed to refer the disputes to an expert, with a further agreement that his decision would be binding on both the parties, and promotions would be on the basis of his recommendations. Dr. Binod Kumar, a Professor of Behavioural Sciences, Indian Institute of Management, Calcutta was agreed upon by both the parties to give the award. Dr. Binod Kumar submitted his report on 27th July, 1985 and the management accepted the recommendations and issued circular No. 53/85 dated 14th October, 1985 (Annexure 5) which reads as under:

In view of the agreement arrived at between the HEC Trade Union Abhiyan Samiti and HEC Management on 29th August, 1984, wherein it was agreed that the recommendations of Dr. Binod Kumar shall be binding on both parties, and all future promotions shall be on the basis of the same. Accordingly, the Management has accepted report of Dr. Binod Kumar.

Accordingly all employees workmen (non-executives) whose promotion is due in the year 1985, as per recommendation of Dr. Binod Kumar's report, will be promoted on or before 31st December, 1985.

4. Orders were issued on 30th December, 1985 promoting all the accountants to the posts of Junior Executives (Officer) in the grade of Rs. 1075-50-1375-1795 in compliance of the report given by Dr. Binod Kumar. But so far as the appellants are concerned who were working as Office Super incidents or Personal Assistants were promoted to the posts of Asstt. Personnel Officers and Private Secretaries respectively in the grade of Rs. 790-30-949-34-1289. The appellants grievance has been that the Management has acted contrary to the report of Dr. Binod Kumar, in refusing to promote the appellants as Junior Executives as was done in the case of accountants.

5. The High Court dismissed the writ petition, holding that no Writ of Mandamus could be issued to the respondents as the Award did not comply and fulfil the procedure prescribed u/s 10(A) of the Industrial Disputes Act and the same being void no legal right could accrue to the appellants under the Award. The High Court in our opinion committed error in taking the above view in as much as the respondents themselves had not taken the stand that such Award was not binding on them or that they did not want to enforce the same. On the contrary the stand taken by the respondents was that recommendations of Dr. Binod Kumar shall be binding on both the parties and in compliance to the said Award they had issued orders on 30th December, 1985 and had given relief to all the employees. Even before us learned counsel for both the parties made their submissions on the basis that the report/award given by Dr. Binod Kumar was binding on them and the dispute was only with regard to its proper implementation. The question whether the Award is void or that it is not

enforceable has not been canvassed before us. In the circumstances, we proceed on the assumption that the Award is binding on the parties. The question thus arises whether the Management has acted contrary to the Award in refusing to promote the appellants to the Junior Executive posts.

6. In order to understand the grievance raised by the appellants we would refer to the following observations made by Dr. Binod Kumar, in the Award under the heading DATA COLLECTION AND ANALYSIS

There was, however, no agreement among them with regard to the proposed promotion policy, though they whole heartedly welcomed this endeavour that a clear cut promotion policy be framed.

Though almost all the non executives have expressed their feelings against need based promotions, and suggested time bound promotion, there were divergent views about the number of years one should work in a particular post. Some suggested three years and others four years.

There was also no agreement among them with regard to the role of qualifications in the overall promotion policy, while the workers rejected the concept of promotion based on qualifications, the degree/diploma holders demanded recognition of qualifications and weightage to be given to the diploma holders in matters or promotions. To some extent the supervisors also opposed the concept of qualification. The Supervisors Association was of the view that there is discrimination between one discipline, i.e. Finance and other discipline, i.e. Administration & Personnel on the ground that in the finance discipline there is only one supervisory cadre, on the other there are two supervisory cadres in other disciplines. In order to remove this discrimination they suggested only one Supervisory cadre....

Since the inception recruitment procedure has not been scientific. As my terms of reference promotion policy, I would not elaborate the recruitment procedure except this that people were recruited centrally and placed in different units. Thus, if one goes with the need based promotion system, it may happen that a person recruited alongwith another will find himself left out while his batch people get promoted in other plants. By the time the person reaches a level when he can be on centralised seniority list he may find even his juniors above him. In course of my discussions several such cases came to my notice. This naturally is highly demoralising and demotivating.

7. After making the above observations Dr. Binod Kumar reviewed the then existing policy and recommended a new promotion policy, which was in two parts, (A) recommendations for the present i.e. from now to a period of approximately ten years; (B) long term measures. Thereafter he made detailed recommendations under Part 'A'. Portions relevant for our purpose are extracted as under:

1. TIME BOUND PROMOTION

It is recommended that time bound promotion system be introduced in HEC for all categories of employees and promotion be given to them strictly in order of seniority and not on the basis of vacancy or need. By promotion I mean both the next higher rank (designation) and next higher scales of pay. This applies to all categories of non executives level employees, technical, non-technical, computer personnel, nursing and para medical staff, and teachers of HEC schools etc. Nursing and para medical staff and computer staff be equated with technical staff and teachers with non-technical staff.

1.1 At the non supervisory level technical workers employees be promoted to the next higher post upto the supervisory level on completion of six years and non technical staff on completion of seven years.

1.2 If due to non availability of jobs in higher level, an employee is required to work on the same job even though he is promoted to higher level, he should accept the same. However, his continuing to do the old job should not in any case lower or change his designation, salary, perquisites, facilities etc. other than the one in which he has been promoted, for example, if an accounts clerk is promoted as an accountant a senior stenographer to PA, a grade B worker to grade A worker, but due to non availability of jobs they are asked to do the old job, they shall get the new designation, salary etc. of accountant, or P.A. or grade A worker as the case may be.

1.3 From the supervisory level to the next level the promotion period should be seven years, i.e. they be promoted to the next higher post after completion of seven years of service irrespective of the fact whether they are from technical or non technical stream. Since at the supervisory level steps for promotion are the same for the technical and non-technical employees, I have recommended the same period for them. However, at the non supervisory level technical worker/ employees have to cross more steps as compared to non technical employees. I have suggested one year difference for non supervisory level employees in 1.1 above.

4. UNIFORMITY IN SUPERVISORY CADRE.

Consistency, which is a must, is not existing in the corporation regarding the levels of supervisory system, in some departments it is two tier system another one tier, and yet another three tier system is existing. This means that seniors by virtue of their posting in departments where double tier system is in existence become juniors to their counterparts of one tier system. As such an employee has to render another specified period at an intermediate channel of promotion to reach the executive level. By the time he becomes an executive, his junior may become a junior manager. Thus if a senior is required to work under a junior not because of his own fault but because of such policy, how can he be motivated to work? How can he keep his moral high? To avoid such anomaly and demoralisation caused because of that I recommend that one tier of supervisory system be adopted for all categories of supervisors technical, non technical,

teaching, nursing para medical and so on.

8. The hierarchy of posts in the HEC organisation prior to the Constitution of Dr. Binod Kumar Committee was as follows:

9. The appellants grievance is that those appointed in the Finance and Accounts Division as Assistant Grade III could reach the level of the Junior Executive seven years ahead of the appellants. It is alleged that the respondents have wrongly implemented the recommendations of Dr. Binod Kumar and they promoted all the accountants in the Finance and Accounts division having completed seven years service as accountant, to the post of Junior Executives in the grade of Rs. 1075-1795/-, but the appellants have been promoted as Assistant Personnel Officer which was a Supervisory post in the grade of Rs. 779-1289/-. According to the appellants the respondents, have acted contrary to the recommendations of Dr. Binod Kumar. The appellants claim that they were already Office Superintendents/P.As on a Supervisory post equivalent to Accountants on the Finance side which was also a Supervisory post and as such the appellants who had also put in seven years ought to have promoted to the posts of Junior Executives in the grade of Rs. 1075-1795 from 30th December, 1985.

10. The case of the Management as put before us by the Learned Additional Solicitor General was that Dr. Binod Kumar had recommended a time bound policy of ten years according to which one tier of Supervisory system was to be adopted for all categories of Supervisors and the existing two tier or three tier system was to be abolished within a period of ten years. It was submitted that in the case of employees on the Administrative division there was already a higher post of APO/P.S. in the grade of Rs. 779-1289/- and the appellants working as OS/PA in the grade of Rs. 774-1196/- were given promotion to the post of APO/PS according to the recommendations of Dr. Binod Kumar. It was submitted that the post of OS/PS (Supervisory) was a wastage post which would stand automatically abolished by 1992 in terms of the recommendations of Dr. Binod Kumar. It was further submitted that the management correctly understood and implemented the recommendations of Dr. Binod Kumar in not giving promotion to the appellants directly to the post of Junior Executive as it was nowhere recommended that the two tiers supervisory system existing in the Administrative division should be made into one tier immediately on the coming into force of the report of Dr. Binod Kumar. It was submitted that in the case of employees working in the Finance and Accounts Division there being only one tier of Accountant in Supervisory Cadre, they were rightly promoted as Junior Executive from 30th December, 1985.

11. We have carefully considered the arguments advanced by Learned Counsel for the parties and have thoroughly examined the report of Dr. Binod Kumar. A perusal of the facts mentioned above unmistakably show that before the appointment of Dr. Binod Kumar controversy had been raised with regard to the then existing promotion policy and the workers and the management were unanimous that there should be a uniform promotion policy in the Corporation.

Taking note of the entire working conditions Dr. Binod Kumar suggested various improvements in the conditions of service of the employees. He made recommendations on promotion policy in two parts. One part of recommendations related to the present i.e. from the date of report to a period of approximately ten years. While dealing with this part of the recommendations he laid down a time bound promotion which applied to all categories of employees whether technical or non- technical. At the non-supervisory level in case of technical workers employees promotion to the next higher post upto Supervisory level on completion of six years and in case of promotion of non-technical staff on completion of seven years. So far as the promotion from Supervisory level to the next level is concerned the relevant recommendation has been mentioned at point 1.3 under the heading 'Time Bound Promotion'. A mere perusal of the above point would show that promotion period from Supervisory level to the next level was recommended as seven years i.e. they should be promoted to the next higher level post after completion of seven years of service irrespective of the fact whether they were from technical or non-technical stream. In Clause 4 under the heading Uniformity in Supervisory Cadre as already extracted above Dr. Binod Kumar had clearly observed that consistency was not existing in the Corporation regarding the levels of Supervisory system, in some departments it was two tier system, another one tier, and yet another three tier system was existing. This meant that seniors by virtue of their posting in departments where double tier system was in existence became juniors to their counterparts of one tier system. As such an employee had to render another specified period at an intermediate channel of promotion to reach the executive level. By the time he becomes an Executive, his junior may become a Junior Manager. Dr. Binod Kumar himself posed a question in the following manner:

Thus if a Senior is required to work under his Junior not because of his own fault but because of such policy, how can he be motivated to work? How can he keep his moral high?

After posing the above questions he clearly recommended as under:

To avoid such anomaly and demoralisation caused because of that I recommended that one tier of supervisory system be adopted for all categories of supervisors, technical, non technical, teaching, nursing para medical and so on.

12. In the light of the above recommendations we would examine, the various grades and posts under the two different divisions namely, Administrative and Personnel division on the one side and Finance and Accounts division on the other side. It would be evident that posts of Office Superintendents/Personal Assistants on the Administrative and personnel side and Accountant on the Finance and Accounts side were almost identical. Both were in supervisory cadre and after the abolition of two or three tier systems, there was no valid justification in not promoting OS/PA to the post of Junior Executive and to promote them on the post of APO/PS which was again in the Supervisory Cadre.

The pay scale of OS/PA was Rs. 774-1196/- and that of APO/PS was Rs. 779-1289/- also goes to show that there was no real difference in the two pay scales and such promotion grants no relief to the appellants under the true spirit, meaning, and scope of the recommendations made by Dr. Binod Kumar.

13. If we examine the problem from another angle then also it would mean that OS/PA who have already worked on such post for more than seven years have now been promoted on the post of APO/PS from 30th December, 1985 and they would only get chance of further promotion as Junior Executive again after seven years i.e. in 1992. On the other hand Accountants having worked for seven years on such post have already been promoted as Junior Executive on 30th December, 1985. Such discrimination was sought to be removed under the Award of Dr. Binod Kumar. Such interpretation would amount to a complete eye wash rather than implementation of the report of Dr. Binod Kumar. While implementing the time bound promotion policy of promotion, after seven years from Supervisory level to Executive level, the promotion cannot be postponed to further period of seven years in case of OS/PA only. This was the main grievance raised by appellants that they were stagnating on the post of OS/PA for a long period and to remove such anomaly Dr. Binod Kumar had recommended a uniform promotion policy. It was the discretion of the respondents to declare the post of OS/PA or APO/PS as wastage post. In any view the promotion from Supervisory level post to Executive level post was to be given in seven years and not fourteen years.

14. We find not force in the contention of Learned Additional Solicitor General in this regard that ten years' time was given by Dr. Binod Kumar in his recommendations for implementing the policy and the Management was not bound to implement the same from 30th December, 1985. The Corporation itself has issued orders on 30th December, 1985 promoting the Accountants to the post of Junior Executive, and we see no justification in not enforcing the report in the case of appellants from 30th December, 1985. There is a clear fallacy in not implementing the recommendations in a proper manner.

15. In view of the above discussion the appeal is allowed, Judgment of the High Court dated 6th September, 1988 is set aside and the promotion of the appellants as APO/PAs (Supervisory) in the grade of Rs. 779-1289 is quashed, the respondents are directed to promote the appellants on the post of Junior Executives in the grade of Rs. 1075-1795/- with effect from 30th December, 1985 or with effect from the date when appellants or anyone of them complete seven years of service on the post of OS/PA. The arrears of pay to which the appellants become entitled in pursuance of this order should be paid within six months. It is made clear that the respondents may adjust any amount already paid to the appellants as APO/PA. In the facts and circumstances of the case the parties shall bear their own costs.