
(2010) 02 RAJ CK 0020
In the Rajasthan High Court

Om Prakash Sharma

APPELLANT

Vs

RSRTC and Others

RESPONDENT

Date of Decision : 02-02-2010

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2010) 1 WLN 627

Hon'ble Judges : Ajay Rastogi, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Ajay Rastogi, J.—Petitioner while holding qualification of Diploma in Electrical Engineering vide certificate dt. 01/03/1975 (Ann.2) was appointed initially as Chargeman on 07/10/77. However, on the recommendation of selection committee, he was appointed as Chargeman in pay scale of Rs. 385-10-415-490-20-650 vide order dt. 01/06/79 (Ann.4) wherein it has been mentioned that his appointment as Chargeman will be effective from the date mentioned against his name after expiry of one year training - as per which, date of appointment as Chargeman was 07/10/1977 and since then he is holding the post substantively for all purposes.

2. It appears that respondent-Corporation changed pay scale of Chargeman in pursuance of the Award dt. 10/03/81 passed by Arbitrator (Shri KK Sarin, Chief Engineer, PWD) vide order dt. 07/07/81 (Ann. 8) and such employees having possessed Diploma and posted as Chargeman or Store Sub Inspector were fixed at Rs. 470/- in pay scale of Rs. 385-20-650/-from the date of appointment and later on the Corporation vide resolution No. 113/dt. 08/12/86 communicated vide order dt. 13/02/87 (Ann. 11) took policy decision that Sr. Foreman/Chargeman having possessed qualification of Diploma (or higher) in Engineering, henceforth be designated as Jr. Engineer (Gr.B) in pay scale of Rs. 640-1180/-; and accordingly, amendment was made in service regulations by appending Schedule attached with resolution order dt. 13/02/87 - as per which posts of Jr. Engineer

(Gr.B) will henceforth be filled 100% by direct recruitment.

3. However, in terms of circular dt. 25/01/92 (Ann. 13) of State Government as regards prescription of selection scales for employees in Class-IV, Ministerial & Subordinate Services and those holding isolated posts and for fixation of pay in selection scales, the Corporation vide order dt. 27/04/93 (Ann. R/3) also approved and introduced grant of selection scales for its employees working in the cadre of Class-IV, Ministerial & subordinate services. As a result whereof, selection scales were made applicable to all employees in Class-IV, ministerial & subordinate services of Corporation and 1st selection scale was made due from the day following the day on which one completes service of 9 years provided he has not got one promotion earlier as available in his existing cadre; and 2nd selection scale was made due from the day following the day on which one completes service of 18 years while 3rd selection scale on completion of 27 years" service. However, there was a proviso thereto that if an employee subsequent to his first appointment to a post in a cadre service, as a result of direct recruitment, is appointed to some other post in the same cadre or any other cadre, service from the date of latter appointment shall be taken into consideration for the purpose of grant of selection scale. Extract of order dt. 27/04/93 (Ann. R/3) being relevant reads ad infra:

2.(i) The first selection grade shall be granted from the day following the day on which one completes service of nine years, provided that the employee has not got one promotion earlier as is available in his existing cadre.

(ii) The second selection grade shall be granted from the day following the day on which one completes service of eighteen years, provided that the employee has not got two promotions earlier as might be available in his existing cadre.

(iii) The third selection grade shall be granted from the day following the day on which one completes service of twenty seven years, provided that the employee has not got three promotions earlier as might be available in his existing cadre.

3. The service of nine, eighteen or twenty seven years, as the case may be, shall be counted from the date of first appointment in the existing cadre in accordance with the provisions contained in the Recruitment Regulations.

Provided that, if an employee subsequent to his first appointment to a post in a cadre/service, as a result of direct recruitment, is appointed to some other post in the same cadre or any other cadre, service from the date of later appointment shall be taken into consideration for the purpose of grant of selection grade.

4. Respondent-Corporation also issued circular dt. 10/07/95 (Ann.19) clarifying in regard to junior Engineer Gr.B for grant of selection scale that it would be applicable from the date of appointment in the cadre of Junior Engineer Gr.B and in view thereof, in case of petitioner for grant of 1st selection scale, respondent-Corporation took note of nine years" service rendered by petitioner from 08/12/86 - the date of Resolution No. 113 (supra) - pursuant to which petitioner

was designated as Jr. Engineer Gr.B in pay scale of Rs. 640-1180/- and granted 1st selection scale vide order dt. 09/05/96 (Ann.21).

5. Counsel for petitioner submits that petitioner was never appointed as Junior Engineer Gr.B, but he was designated on account of his qualification having possessed of Diploma in Engineering in terms of Corporation's resolution dt. 08/02/86 conveyed vide order dt. 13/02/87 (Ann. 11); as such policy decision taken by Corporation to grant benefit of selection scales to Junior Engineer Gr.B from the date of appointment as Junior Engineer Gr.B will not be applicable in regard to present petitioner; and his services rendered substantively as Chargeman since 07/10/77 could not have been obliterated by respondents for purposes of grant of selection scales in terms of Circular dt. 27/04/93 (Ann.R/3).

6. Respondents in their reply inter-alia averred that petitioner was initially holding post of Chargeman and in terms of resolution conveyed vide order dt. 13/02/87 (Ann.11) he was appointed as Junior Engineer Gr.B which is a higher post to be filled 100% by direct recruitment and once he was appointed in the cadre of Jr. Engineer Gr.B in terms of resolution (Ann.11), he can only be considered for grant of 1st selection scale on completion of nine years' service from the date he was appointed as Junior Engineer Gr.B and services rendered prior thereto as Chargeman in no manner can be considered & taken note of in terms of Circular dt. 27/04/93 (Ann. R/3); and taking note of services rendered on being appointed as junior Engineer Gr.B, he has been rightly granted selection scales on completion of 9/18/27 years service; as such decision of respondents being in consonance with their policy decision does not call for interference.

7. I have considered rival contentions of Counsel for the parties and with their assistance, examined material on record. Facts almost have remained uncontroverted that petitioner was appointed as Chargeman w.e.f. 07/10/77 and consequent upon recommendations of selection committee, he was fixed in pay scale of Rs. 385-10-415-490-20-650 vide order dt. 01/06/79 (Ann.4) with a clear stipulation that his appointment would be effective from the date mentioned against his name viz. 07/10/77 and after expiry of one year's training.

8. However vide subsequent policy decision of Corporation in terms of Award dt. 10/03/81, those having qualification of Diploma in Engineering and holding post of Chargeman/Store Sub Inspector were fixed at higher stage of Rs. 470/- in pay scale of 385-20-650/- and later on Corporation took resolution to designate such persons, holding qualification of Diploma in Engineering as Junior Engineer Gr.B vide order dt. 13/02/87 (Ann.11); while at the same time, the Corporation also took a policy decision to fill up posts of Junior Engineer Gr.B by direct recruitment; and accordingly those holding post of Chargeman having qualification of Diploma in Engineering were designated as Junior Engineer Gr.B.

9. From the material on record, it depicts that petitioner was never appointed by any mode of recruitment on the post of Junior Engineer Gr.B having been included in Schedule appended to the order dt. 13/02/87 (Ann.11) but those

holding post of Chargeman having possessed qualification of Diploma in Engineering in terms of resolution dt. 08/12/86 conveyed vide order dt. 13/02/87 are designated as Junior Engineer, Gr.B. It appears that clarification made by respondent vide Circular dated 10th July, 1995 (Ann.19) is in regard to those having been appointed as Junior Engineer Gr.B are made entitled to grant of selection scale from the date of appointment.

10. As regards petitioner, it was not the case of respondents that their policy decision did not provide for designation of the post of Chargeman which he was holding and possessing qualification of Diploma in Engineering and pursuant to policy decision dt. 13/02/87 (Ann.11) the petitioner was designated as Junior Engineer Gr.B due to his qualification. In the opinion of this Court, Circular dt. 10/07/95 (Ann.19) would not apply to the petitioner.

11. Circular dt. 27/04/93 (Ann.R/3) clearly stipulates that employees of corporation working in the cadre of Class IV, ministerial & subordinate services are entitled for grant of 1st/2nd/3rd selection scales respectively from the day on which one completes 9/18/27 years of service provided having not got one promotion earlier as available in existing cadre. Indisputably, petitioner was not granted promotion in existing cadre of Chargeman, which was subsequently designated as Junior Engineer Gr.B as he was holding the post of Chargeman having qualification of Diploma in Engineering, having fallen within the policy decision taken under Regulation conveyed vide order dt. 13/02/87 (Ann.11); in such circumstances, policy decision in no manner will construe the case of petitioner of being promoted or appointed as Junior Engineer Gr.B. Once petitioner rendered substantive service in the Corporation w.e.f. 07/10/77 as is evident from order dt. 01/06/79 (Ann.4), his services rendered as Chargeman prior to being designated as Junior Engineer Gr.B, in the opinion of this Court cannot be obliterated for purposes of grant of selection scale on completion of 9/18/27 years of service in terms of Circular dt. 27/04/93 and denial whereof is not only arbitrary but also in violation of Article 14 of the Constitution.

12. Submission made by Counsel for respondent that on being appointed as Junior Engineer Gr. B, services rendered thereafter would be counted for the purpose of grant of selection scale in the case of Junior Engineer Gr.B, in the opinion of this Court is without any substance for the reason that the petitioner was never appointed by any mode of recruitment as Junior Engineer Gr.B while it was a case of being designated on account of having possessed qualification of diploma in Engineering holding post of Chargeman; and resolution dt. 08/12/86 conveyed vide order dt. 13/02/87 (Ann.11), was totally misconstrued by respondent in treating such persons having been designated as Junior Engineer Gr. B while holding post of Chargeman after due process of selection having gone through since 07/10/77 as is evident from order dt. 01/06/79 (Ann.4); as such obliterating the services rendered as Chargeman as taken note of by respondent while considering for grant of selection scale in terms of Circular dt. 27/04/93 (Ann.R/3) in no manner can be held to be justified and stands set aside.

13. Consequently, writ petition succeeds and is hereby allowed. Respondents are directed to re-consider the case of petitioner for grant of selection scales to which he is entitled for in terms of Circular dt. 27/04/93 (Ann.R/3) on completion of 9/18/27 years of service taking note of his initial service rendered in the cadre of Chargeman w.e.f. 07/10/77 and if made entitled thereof, benefit of selection scales be granted along with consequential benefits including arrears if payable. All exercise to comply with directions (supra) be completed within three months from the receipt of certified copy of this order. No order as to costs.