
(2014) 06 BOM CK 0061
In the Bombay High Court
Case No : Writ Petition No. 2361 of 1998

P.B.S.V. Padmanabham

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 19-06-2014

Acts Referred:

Citation : (2014) 06 BOM CK 0061

Hon'ble Judges : S.B. Shukre, J;B.R. Gavai, J

Bench : Division Bench

Advocate : M.M. Sudame, Advocate for the Appellant; S.W. Deshpande, Advocate for the Respondent

Final Decision : Dismissed

Judgement

B.R. Gavai, J.—The petitioner has approached this Court being aggrieved by judgment and order dated 11/6/1998 passed by the learned Central Administrative Tribunal dismissing the Original Application for re - fixing the claim of his seniority.

2. Heard Shri Sudame, learned Counsel appearing on behalf of the petitioner and Smt. Deshpande, learned Advocate appearing on behalf of respondents No. 1 to 3.

3. It is the basic contention of the petitioner that in view of the Office Memorandum dated 07/02/1986, if any vacancy has remained unfilled in the quota reserved for direct recruits, then the persons available for the promotional cadre are to be clubbed together and the seniority is to be given to them accordingly. It is further contention that the remaining vacancies are required to be carried forward and the direct recruits appointed in the subsequent years would become junior to the said promotees. It is the contention of the petitioner that since in the year 1987, i.e. the year in which the petitioner was promoted on promotional post, there were vacancies in the cadre of direct recruits, only the unfilled vacancies were required to be carried forward and the petitioner's

seniority from that year was required to be determined by placing him below the direct recruit of that year and the subsequent direct recruits are required to be placed below the petitioner.

4. By now, it is well settled principle of law that the service conditions of the employees are governed by the Rules and Regulations, which cover their service conditions. No doubt, the petitioner's contention would have been right, if he is governed by the O.M. No.35014/2/89 Estt.(D), dated 07/02/1986. However, it is necessary to refer to Clause -07 of the said Office Memorandum, which reads thus :

"These orders shall take effect from 1st March, 1986, Seniority already determined in accordance with the existing principles on the date of issue of these orders will not be re-opened. In respect of vacancies for which recruitment action has already been taken, on the date of issue of these orders either by way of direct recruitment or promotion, seniority will continue to be determined in accordance with the principles in force prior to the issue of this O.M..."

From the perusal of the said Clause, it would reveal that the said order shall take effect from, 1st March, 1986. It is specifically stated that in respect of the vacancies for which the recruitment action had already begun on the date of issue of this memorandum, either by way of direct recruitment or promotion, the seniority will be continued to be determined in accordance with the principles in force prior to the issue of the memorandum.

5. The perusal of the material on record would reveal that the vacancy had occurred in the year 1985 and the process for filling up of the post, either by way of direct recruitment or by way of promotion, had already begun and the sanction to that process had been granted on 07/02/1986. It is thus clear that the selection, either by way of direct selection or promotion, had already begun prior to the office memorandum on which the petitioner relied had come to an effect, i.e. on 1st March, 1986. In that view of the matter, the case of the petitioner would be covered by O. M. No.9 -11/55, RPS, dated 22nd December, 1959. Clause -6 of the said memorandum reads thus :

"6. Relative seniority of Direct Recruits and Promotees. - The relative seniority of direct recruits and of promotees shall be determined according to the rotation of vacancies between direct recruits and promotees which shall be based on the quotas of vacancies reserved for direct recruitment and promotion respectively in the Recruitment Rules."

It would thus be seen that Clause-6 of Office Memorandum dated 22nd December, 1959 clearly provides that the relative seniority of direct recruits and or promotees shall be determined according to the rotation of vacancies between direct recruits and promotees, which shall be based on the quotas of vacancies reserved for direct recruitment and promotion respectively in the Recruitment Rules.

6. Since, in the Recruitment Rules, quota of direct recruits and the promotees is fixed in the ratio of 75 : 25, the respective seniority of the promotees and the direct recruits will have to be construed on the basis of the roster point available in accordance with the said quota. In that view of the matter, we do not find any error committed by the learned Tribunal in dismissing the Original Application filed by the petitioner. The writ petition is without merit and as such dismissed.

Rule discharged. No costs.