
(2011) 09 CHH CK 0059
In the Chhattisgarh High Court
Case No : Writ Petition No. 3287 of 2000

P.K. Mohanan

APPELLANT

Vs

Steel Authority of India Ltd. and Another

RESPONDENT

Date of Decision : 12-09-2011

Acts Referred:

Citation : (2011) 2 CGBCLJ 295 : (2012) 2 MPJR 32

Hon'ble Judges : Satish K. Agnihotri, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Hon"ble Shri Satish K Agnihotri, J.—In the instant petition, the petitioner seeks quashing of the selection proceedings held for E-0 grade in Personnel & Administration Department of respondent No. 1, further setting aside the selection of the respondent 2 on the post of E-0 grade. The petitioner further seeks a direction to the respondent No. 1 to consider and promote the petitioner in E-0 grade from the date respondent 2 was promoted with all consequential benefits.

2. The brief facts, as projected by the petitioner, are that the petitioner was initially appointed and joined in the month of February, 1980, as a Private Secretary (PS) in Bhilai Steel Plant (for short 'the BSP') of Steel Authority of India Ltd. (for short, 'the SAIL'). The petitioner's whole service record was clean and unblemished. At no point of time any disciplinary proceedings or criminal case were pending or contemplated against him. No adverse C.R. was ever communicated to him. The petitioner is presently working in S-10 Grade (non-executive) w.e.f. 31 December, 1996. In the line of promotion, the next promotion of Private Secretary is to the post of Junior Executive (E-0 Grade). The E-0 grade is an executive post. The transfer/posting, seniority, promotion, etc. of all the Private Secretaries of BSP, though posted in various Sections, are being dealt with centrally by the Personnel & Administration Department of the BSP. Accordingly, all the Junior Private Secretaries/ Private Secretaries of BSP have a

common seniority and line of promotion irrespective of their place of posting. The respondent No.1 has formulated a policy of promotion from Non-Executive to Executive Post (E-0 Gr.) which is applicable in all the units of Plants of Steel Authority of India Ltd. (SAIL). A perusal of the policy goes to show that the eligibility of non-technical staff for promotion from Non-Executive to Executive Post in E-0 Grade as per the SAIL policy mentioned above is as under :-

Matriculates : 11 years in S-8 and above grades.

Graduates/PGs : 09 years in S-8 and above grades.

Graduates/PGs : 07 years in S-8 and above grades. with Professional qualification

3. Petitioner would further submit that the respondent 2 was earlier working in Neelanchal Ispat Nigam Ltd. (for short, 'the NINL'). The respondent 2 sought his transfer on his own requests from NINL to BSP. The said transfer was from other organization/unit/plant and accordingly, as per the general rule of transfer from one organization to another, the seniority of the persons, so transferred on his own request, had to be reckoned from the date of his joining in the new organization/unit/plant. In other words, such a transferred employees shall be treated to be the junior-most of all the employees already working in the new organization. The said principle has been upheld by Supreme Court in the matter of Renu Mullik v. Union of India & Another 1 wherein it was held that an employee who seeks transfer on his own request gets bottom seniority in the new unit although his earlier services may be counted for the purposes of counting his eligibility for consideration. Respondent 2 sought transfer on his own request and he joined the BSP in L-8/S-8 Grade on 15 February, 1991. Accordingly, the Management has rightly placed the respondent 2 as junior to the petitioner. It is categorically submitted that the seniority position of the petitioner and the respondent 2 has not been changed. The respondent 2 was junior to the petitioner. The petitioner's name found place at No.59 wherein the respondent 2 was at No. 61 in the seniority list as on 31 March, 2000. Thus, the petitioner was all the time senior to the respondent 2 in the seniority list. In the criteria or eligibility as determined under Personnel Manual, the respondent 2 became eligible to be called for E-0 Grade interview on or after 15 February, 2000 whereas the petitioner became eligible to be called for E-0 interview from 31 December, 1996. From December, 1999 onwards, a good number of eligible employees of both works and non-works (Technical & Non-Technical) departments were interviewed by the BSP Management for selection to the post of Junior Executive (E-0 Grade). In accordance with the existing guidelines/policy of the respondent 1, the eligible non-executives for promotion to the post of Executive (E-0 Grade) were required to be called for interview in the ratio of 1:3 with reference to the number of vacancies in the order of their seniority. In the Personnel and Administration Department coming into Non-works Department of Bhilai Steel Plant to which the petitioner belongs, an interview for promotion to E-0 Grade has taken place on 22/23 May, 2000. No interview letters were issued and the candidates were informed over telephone to appear in the interview. The

respondent 2 was interviewed on the telephonic call by the Management for the post of E-0 Grade, whereas the petitioner was not called for such consideration who was all the time senior to the respondent 2. Because of such non-consideration, the petitioner had to suffer monetary loss in terms of higher pay package, increased monthly incentive attached to the post, enhanced local traveling expenses, vehicle advance for four wheelers, allowance for periodicals and magazines.

4. On the other hand, Dr. Shukla, learned Senior counsel appearing with Shri Shailendra Shukla, learned Advocate for the respondents, would submit that the petitioner had filed a case No.A-1/78/MPIR/99 before the Labour Court, Durg, under the provisions of the Madhya Pradesh Industrial Relations Act, 1960 challenging the Long Service Award given to Shri C.G. Upadhyay, which was rejected on 14 November, 2002 (Annexure R/1-1). The petitioner had, therefore, no locus standi to directly file present writ petition in the Hon'ble High Court challenging the promotion of the respondent 2 on the ground of being junior. He should first file the case before the Labour Court under MPIR Act, 1960 for redressal of his grievance which he had not done and therefore, his petition in the Hon'ble Court was not maintainable and deserves to be dismissed on this ground alone. The petition was also barred by limitation and laches as he should have challenged the question of seniority in the year 1991 when the respondent No.2 joined SAIL, BSP on 15 February, 1991 and not after the lapse of 9 years when the respondent No.2 was already promoted twice in S-9 on 31 December, 1991 (PG) S10 on 31 December, 1995 prior to his promotion to E-0 w.e.f. 30 June, 1998. The petition of the petitioner deserves to be dismissed on this ground also.

5. Dr. Shukla would further contend that there was no infringement of rules in the matter of promotion from non-executive to executive post (E-0). The true facts are that the petitioner was much junior to the respondent 2 and was not eligible for consideration for interview to the post of junior executive (E-0) as he did not complete total Nine years of service in S-8, S-9 & S-10 grade on 30th June, 1998. It is made clear that as per eligibility, the respondent No.2 was holding S-8 grade w.e.f. 13 March, 1983. The respondent No.2 had represented vide his application dated 25 June, 1991 for allowing him higher grade, keeping in view his past 8 years of service in A-3 grade which he was holding from 15 March, 1983 in NINL. The management considered the same and he was allowed S-9 grade (Personal Grade) w.e.f. 31 December, 1991. The respondent 2 was further given higher grade of S-10 to the post of private Secretary w.e.f. 31 December, 1995. The respondent 2 was therefore considered for promotion to the executive post (E-0) since he has completed more than 9 years service in S-8, S-9 and S-10 grade on 30 June, 1998 and was promoted to the post of Junior Executive (E-0) w.e.f 30 June, 1998.

6. It was next submitted that the petitioner was in S-8 grade w.e.f 31 December, 1989. He was further given higher grade of S-9 w.e.f. 31 December, 1992 and

S-10 grade w.e.f. 31 December, 1996. The petitioner was not eligible for promotion to the E-0 as he had not completed 9 years service in S-8, S-9 and S-10 grades on 30 June, 1998 as per the executive promotion policy. The Superintendent (Diesel) of the respondent company with whom the petitioner was attached in the year 1983 had ordered for issue of charge-sheet to the petitioner on 07 March, 1983 for refusal of typing work which was subsequently dropped.

7. The petitioner is at present in S-10 grade non-executive w.e.f. 31 December, 1996. But it is not correct that there is LOP (Line of Promotion) from non-executive to executive E-0 grade. It is submitted that it is based purely on selection basis as per the executive promotion policy of the answering respondent. The executive promotion policy from non-executive cadre to executive cadre, which is self-explanatory that there is no LOP and promotions are made through selection basis. The petitioner did not fulfill the eligibility criteria for completion of 9 years of service, hence this petition is liable to be dismissed. It is submitted that the petitioner is junior to the respondent 2 in S-8 grade. The petitioner got S-8 grade w.e.f. 31 December, 1989 whereas the respondent 2 is holding S-8 grade w.e.f. 15 March, 1983. It was further stated that the candidates who were having the educational qualification of graduation and completed 9 years of service or more on 30 June, 1998 in S-8, S-9 & S-10 grade were called for interview and considered for promotion to E 0. In the instant case, the petitioner had not completed 9 years service as he was given S-8 grade on 31 December, 1989 and he would be completing 9 years service only on 31 December, 1998. As he was not eligible for promotion, petition is liable to be dismissed. The petitioner's educational qualification are B.A. L.L.B. and therefore 9 years regular service in S-8 grade and above is necessary to consider him for promotion to the post of E-0.

8. The respondent 2 was transferred from (NINL) to Steel Authority of India Ltd. (SAIL) on parallel basis with posting to Bhilai Steel Plant with the condition that his seniority in the present grade will be counted from the date of joining in respondent company. His absorption in SAIL BSP is in continuity of service and in the same grade on parallel transfer terms. The respondent 2 had joined SAIL as Assistant (S/T) w.e.f. 26 March, 1973 at Rourkela Steel Plant whereas, the petitioner joined as Assistant (S/T) on 05 February, 1980 in SAIL, BSP. The respondent 2 was transferred from Rourkela to NINL in June, 1982 and he joined there on 21 June, 1982. Later on, the respondent 2 was considered for his absorption in SAIL, BSP and transferred from NINL to BSP and joined at BSP on 15 February, 1991 in L-8 grade. Thus, it cannot be held that the transfer of the respondent 2 was as per his own request. The petitioner was thus, junior to the respondent 2 and therefore, the claim of the petitioner is not tenable. The respondent 2 had already completed 9 years service in S-8 grade and above on 30 June, 1998 whereas the petitioner completed 9 years service in S-8 grade and above, only on 31 December, 1998.

9. Dr. Shukla would next submit that so far as communication of interview through telephone is concerned, it is an accepted mode of the respondent company. It was not the respondent 2 alone who was called for interview but as many as 133 candidates were interviewed out of which 53 candidates were promoted.

10. Heard the petitioner-in-person as well as learned counsel appearing for the respondents, perused the pleadings and the documents appended thereto.

11. At the time of argument, Shri Mohanan submitted that pursuant to the interim order dated 29 May, 2000, all the promotions to the post of E-0 grade would be disturbed as in total, 1760 persons had been promoted to E-0 grade after 30 June, 1998. Thus, the petitioner gave up the relief for quashing the selection process and appointment of the respondent 2. However, he confines his prayer only to the relief for directing the respondent 1 to consider and promote the petitioner in E-0 grade from the date the respondent 2 was promoted, as is evident from the written submission dated 02 September, 2011, filed by Shri P.K. Mohanan.

12. Under Personnel Manual, 1992, the policy for promotion from non-executive to executive cadre, provides as under:

1. Policy: All promotions from non-executive cadre would be through E-0 only. They will be placed in E-1 after completion of training and based on performance in E-0.

13. Para 2 of the above policy provides for criteria for promotion to E-0 grade in case of technical, is as under:

The posts to be filled in E-0 level in Technical categories will be earmarked as follows:

i) Management Trainees - Minimum 50% vacancies at E0/E1/E2A.

ii) B.Sc/Diploma holders -About 40% of vacancies at E0/E1/E2A.

iii) Exceptionally good and highly skilled matriculates and matriculates with ITI about 10% vacancies at E)/E1/E2A.

14. Para 10 of the above policy provides for criteria for promotion to E-0 grade in case of non-technical, is as under:

a) Minimum qualification for eligibility will be graduation in any discipline. However, exceptionally good matriculates will also be considered. All such promotions of matriculates should have the specific approval of Managing Director/Chief Executive. In the category of P.A./P.S. the minimum eligibility qualification will be matriculation.

b) 11 years of service in ML-3/ML-4/L-8/L-9 for matriculates, 9 years of service for graduates and post graduates and 7 years of service for those having Graduation or Post graduation with Professional qualification.

15. There is no dispute that the respondent 2 was granted seniority w.e.f. the date he had joined the services of BSP on transfer. It is evident from the letter dated 25 June, 1991 (Annexure R-1A) of the respondent 2 that he joined BSP on 15 February, 1991 and also from the seniority lists.

16. It is evident from the provisional seniority list of Jr. Private Secretary (L-8) as on 1 July, 1991 (Annexure P/3) and seniority list of P.Ss.(Non-Exe) S-10 grade as on 31 March, 2000 (Annexure P/4) that on the basis of entry of respondent 2 on L-8 grade in BSP, he was at S.No.38 and the petitioner was at S.No.35 and in the seniority list of S-10, the petitioner was at S.No.59 and the respondent 2 was at S.No.61. Thus, the contention of Dr. Shukla that the respondent 2 was much senior to the petitioner and he was not given seniority from the date of joining into the service of BSP was contrary to the facts and the same is rejected.

17. However, he had been working in L-8 grade since 15 March, 1983 in NINL. The respondent 2, by order dated 31 December, 1991 (Annexure R/1) was placed in the higher grade of L-9 (Personal Grade) w.e.f. 31 December, 1991. Subsequently, by order dated 02 January, 1996 (Annexure R/2), the petitioner was placed at S-10/L-10 grade.

18. On the other hand, the petitioner was promoted on regular basis on L-8 grade by order dated 30 December, 1989 w.e.f. 31 December, 1989. On 30 June, 1993, the petitioner was granted higher grade of L-9. Subsequently, on 30 June, 1996, the petitioner was further granted S-10/L-10 grade. The petitioner did not question the grant of higher grade to the respondent 2 w.e.f. 12 December, 1991. Requisite requirement under the policy was not grant of higher grade of L-9 or L-10, but years of service in L-8/L-9 together.

19. On perusal of the rules, as a forestated, it is evident that the qualification for promotion to E-0 grade is 11 years of service for matriculates in S-8 (L-8) and above grades, 9 years for graduates/post graduates in S-8 (L-8) and above grades and, 7 years for graduates/post graduates with professional qualification in S-8 (L-8) and above grades. Thus, minimum 7 years service with graduation/post graduation with professional degree would make eligible for consideration. It is evident from the circular No. M&R-1/82, dated 01 January, 1982 that professional qualification of degree of L.L.B. is at serial No. 34 for employees in law, vigilance, personnel & town and administration.

20. Contention of Shri Mohanan that the years of service as specified in para 10 of the policy for promotion from non-executive to executive cadre (Annexure P/2) means seniority in the service of BSP, is relevant consideration. Indisputably, the petitioner was senior to the respondent 2, as aforestated.. On 23.05.2000, i.e. the date of interview for promotion to E-0 grade, the petitioner has 10 years four months of service and if the service in BSP is counted, the respondent 2 had 9 years and 3 months. Thus, both were eligible for consideration. This issue came up for consideration in the matter of Renu Mullick (Smt.) v. Union of India & Another 2 wherein the Supreme Court, held that the

transferee is to be treated as new entrant to which he was transferred for the purpose of seniority. The transferee's case would come for consideration for promotion after he had obtained sufficient seniority in the new place. But when the employee is considered, his previous service in the previous office cannot be ignored for the purpose of determining his/her eligibility. 21. In *R.K. Sethi & Another v. Oil & Natural Gas Commission & Others* 3, the Supreme Court held as under:

12. The "next below rule" in service jurisprudence seeks to ensure that if a junior employee is given promotion without considering his senior then the senior employee can claim the right to be considered for such promotion with effect from the date on which the junior was so promoted.

22. Thus, all the employees who were senior to the respondent 2 as per the seniority list were eligible for consideration. However, previous service of the respondent 2 could have been considered for the purpose of determining his eligibility.

23. The respondent 2, was admittedly junior to the petitioner and was considered for upgradation before the petitioner. Thus, the petitioner was entitled to consideration for upgradation to E-0 grade from the date, the respondent 2 was considered.

24. According to Dr. Shukla, the relevant date for consideration was 30 June, 1998. The petitioner completed 9 years of service in L-8 grade and above, only on 31 December, 1998 as he was promoted to L-8 grade w.e.f. 31 December, 1989. Since the petitioner has given up the issue of appointment of respondent 2, it is not necessary to go into the issue as to whether the years of service is to be counted in BSP alone and/or in the previous employment also.

25. As per the policy, the graduate with professional qualification is required to have only 7 years service in L-8/L-9 grade, the petitioner was entitled to be considered even on 30.06.1998. There is no dispute that the petitioner was not considered for promotion to E-0 grade on that date. In the provisional gradation list of Junior Private Secretary (L-8) as on 1.7.1991 (Annexure P/3), clearly indicates the qualification of the petitioner as B.A. LLB and the qualification of respondent 2 as Graduate and not having any professional qualification.

26. Accordingly, the respondent 1 is directed to consider the case of the petitioner as on 30 June, 1998 for grant of promotion to E-0 grade and if he is found successful, he would be entitled to all the consequential benefits.

27. In view of the above, the writ petition is allowed to the above extent.

28. No order as to costs.