
(2019) 10 RAJ CK 0086

In the Rajasthan High Court

Case No : Civil Writ Petition No. 15220 Of 2015

Raja Ram Meena

APPELLANT

Vs

Jaipur Vidyut Vitran Nigam Ltd And Ors

RESPONDENT

Date of Decision : 22-10-2019

Acts Referred:

Constitution Of India, 1950 — Article 14, 226
Code Of Civil Procedure, 1908 — Order 41 Rule 27

Citation : (2019) 10 RAJ CK 0086

Hon'ble Judges : Prakash Gupta, J

Bench : Single Bench

Advocate : R.N. Mathur, R.D. Meena, S.S. Shekhawat, H.V. Nandwana

Final Decision : Dismissed

Judgement

1. The instant writ petition under Article 226 of the Constitution of India has been preferred by the petitioner with the following prayer:-

"It is, therefore, most respectfully prayed that this Hon'ble Court may most graciously be pleased to accept and allow the writ petition and further be pleased: i. Held illegal to the action of the respondents whereby the order dated 31.05.2008 issued in respect of the petitioner, has been reviewed after more than 6 years. ii. Held illegal to the order dated 08.08.2014 whereby the petitioner has been placed on adhoc basis XEN and seniority list of XEN (Civil) dated 29.05.2015 wherein the name of the petitioner has been removed, and consequently after setting aside the same restore the order dated 31.05.2008 and the petitioner may be allowed to continue on the post of XEN (Civil) on regular post with all consequential benefits. iii. By an appropriate writ order or direction the order dated 8.8.2014 issued in respect of private respondent No.4 granting him promotion on the post of XEN (Civil) against the vacancy of year 2008-09 in place of petitioner, be declared bad and illegal and same may be quashed and set aside. iv. By an appropriate writ order or direction the respondents be directed to revoke the order dated 8.8.2014 issued in respect of

the private respondents, who are juniors, have been given promotion prior to the petitioner on the post of XEN (Civil) v. By an appropriate writ order or direction the respondents be directed to review the seniority list of XEN (Civil) and place the petitioner in Seniority list of XEN (Civil) above the private respondents No.3 to 6. vi. Any other order which this Hon'ble Court deems just and proper in the facts and circumstances of the case may also be passed in favour of the petitioner. vii. Cost of the writ petition may also be awarded in favour of the petitioner."

2. The brief facts necessary for a fair adjudication of the instant writ petition are that the petitioner was appointed as Junior Engineer (Civil) on 14.06.1983 with the Rajasthan State Electricity Board. At the time of his appointment, the petitioner had a Diploma in Engineering. A final seniority list of Junior Engineers was made on 31.03.1984. On 21.08.1993, the petitioner was promoted to the post of Assistant Engineer.

3. On 01.04.2009, the respondent-Department issued a tentative seniority list of Executive Engineer (Civil) and the petitioner's name found place at serial number 2 in this seniority list. It was averred by the petitioner that he worked on the post of Executive Engineer (Civil) for a period of one year and duly completed the period of probation. Thereafter, on 12.05.2010 a final seniority list of Executive Engineer (Civil) was issued and the petitioner was placed at serial number 2 in the said seniority list.

4. The grievance of the petitioner is that the respondent- Jaipur Vidyut Vitran Nigam Limited (hereinafter "JVNL") vide the impugned order dated 08.08.2014, convened a Review DPC to select the candidates for promotion to the post of Executive Engineers and placed the petitioner below the respondents No.3 to 6 albeit the petitioner was senior to the respondents No.3 to 6. To buttress his averment, the petitioner relied on all the previous seniority lists published by the respondents. Reliance in this regard was placed on tentative seniority list of Assistant Engineers (Civil) as published on 16.04.2007 and the final seniority list of Assistant Engineers, which was published on 29.05.2007. It was also averred by the petitioner that one of the respondents No.3 to 6 Sh. Kamlesh Kumar Sharma had challenged the seniority list dated 29.05.2007, which was negated by this court vide its order dated 16.05.2008. Further, the order dated 16.05.2008 was also upheld by the Division Bench of this Court on 30.05.2008 and Special Leave to Appeal was also dismissed by the Apex Court vide its order dated 02.09.2008.

5. It was further averred by the petitioner that a DPC was convened on 28.05.2008, which recommended that the petitioner be promoted to the post of Executive Engineer (Civil) against the vacancies of 2008-09 and on the basis of the recommendations of the said DPC, the petitioner was given promotion on the post of Executive Engineer vide order dated 31.05.2008. Furthermore, the respondent department also issued a tentative seniority list of Executive Engineers on 01.04.2009, a copy of which was annexed with the writ petition as

Annexure 6. Followed by this tentative seniority list was a final seniority list of Executive Engineers, which was published on 12.05.2010.

6. That the petitioner also averred that pursuant to the recommendations of the Review DPC, a tentative seniority list of Executive Engineers was issued on 10.04.2015 and in the said seniority list, the name of the petitioner was removed and those of the respondent Nos.3-6 were included. Further, despite the petitioner having submitted a detailed representation against the tentative seniority list dated 10.04.2015, the official respondents issued a final seniority list of Executive Engineers and Assistant Engineers on 29.05.2015.

7. Reiterating the averments made in the writ petition, Mr. R.N. Mathur vehemently contended that the action on part of the respondents No.1 & 2 whereby they reviewed the seniority list after a lapse of more than six years is illegal and patently arbitrary. Reliance was placed by the learned senior counsel on the circular dated 27.12.2012 issued by the Energy Department, Government of Rajasthan. Much reliance was placed on point number 3 of the aforementioned circular. Mr. Mathur also contended that the impugned order dated 08.08.2014 was nothing but an attempt to bypass the earlier orders passed by this Court whereby this Court had upheld the seniority lists issued earlier, wherein the petitioner was placed above the respondents No.3 to 6. Mr. Mathur also contended that pursuant to the recommendations of the Review DPC, no personal hearing was afforded to the petitioner before passing the impugned order dated 08.08.2014.

8. Per contra, Mr. Sandeep Singh Shekhawat, learned counsel appearing for the respondents No.1 & 2 has vehemently opposed the submissions made by Mr. Mathur. Mr. Shekhawat contended that at the time of initial appointment, the petitioner, being a Diploma holder was appointed as Junior Engineer-II and accordingly, his name was placed at serial number 91 in the seniority list of Junior Engineer-II. Mr. Shekhawat also contended that seniority lists of Junior Engineer-I) and Junior Engineers-II were separate. However, for promotion to the post of Assistant Engineer, a common seniority list had been published and considering the length of the service, the petitioner was placed above the respondents No.3 to 6. Further, based on his seniority, the petitioner was promoted as Assistant Engineer against the ST category. In other words, the petitioner was given the benefit of accelerated promotion and consequential seniority. Attention was also drawn to the table reproduced at page No.71 of the reply to the writ petition, containing the service particulars of the petitioner and also that of the respondents No.3 to 6. Mr. Shekhawat also relied on the order dated 26.09.2012 passed by respondents vide which a new proviso was added to the JVVNL regulations. the operative portion of the order dated 26.09.2012 reads as thus:

"Provided that reservation for Scheduled Castes and Scheduled Tribes employees, with consequential seniority, shall continue till the roster points are exhausted; and adequacy of promotion is achieved.

Once the roster points are complete the theory of replacement shall thereafter be exercised in promotion whenever vacancies earmarked for Schedules Castes/ Scheduled Tribes employees occur.

If on the application of these provisions Scheduled Castes/Scheduled Tribes employees who had been promoted earlier and are found in excess of adequacy level, shall not be reverted and shall continue on ad-hoc basis, and also any employee who had been promoted in pursuance to Notification No.F.7(1) DOP/A-II/96 dated 01.04.1997 shall not be reverted.

Notification No.F.7(1) DOP/A-II/96 dated 01.04.1997 shall be deemed to have been repealed w.e.f. 01.04.1997.

Explanation:-Adequate representation means 16% representation of the Scheduled Caste and 12% representation of the Scheduled Tribes in accordance with the roster point."

Mr. Shekhawat also contended that the roster being small, promotions were to be made as per the L-shape Roster and since, there were only two posts of Executive Engineers and the first two roster points pertained to candidates belonging to the General/Unreserved categories and the petitioner being an ST candidate, who had already availed the benefit of accelerated promotion, could not be promoted. However, considering that the petitioner was promoted on the post of Assistant Engineer prior to the respondents No.3 to 6, the petitioner was allowed to continue on the post of XEN on ad-hoc basis and was not reverted. Mr. Shekhawat also contended that the averment made by the petitioner that persons junior to him were promoted is also misconceived as there were two different seniority lists of JEN-I and JEN-II and the petitioner being a Diploma holder was placed at serial number 91 in the seniority list of JEN-II and till date, no JEN-II having a Diploma has been promoted to the cadre of Executive Engineer (Civil).

9. Mr. Harsh Vardhan Nandwana, appearing for the respondents No.3 to 6, while justifying the impugned orders contended that the petitioner has not challenged the order dated 26.09.2012 whereby a new proviso was added to the JVVNL service regulations. The operative part of the order dated 26.09.2012 has already been referred to above. Mr. Nandwana also contended that the petitioner was earlier promoted as Assistant Engineer and Executive Engineer, availing the benefit of reservation. However, the L-point roster having being introduced by notification by the Government of Rajasthan dated 20.11.1997, the Review DPC was rightly convened in pursuance to the aforesaid notification. Since, the petitioner was not coming under the roster point, he was rightly not promoted to the post of Executive Engineer. Furthermore, Mr. Nandwana also contended that there was inordinate and unexplained delay in filing the writ petition as the impugned order was passed on 08.08.2014 whereas the instant writ petition was filed a lapse of more than one year i.e. on 07.10.2015.

10. After having heard the counsel for the parties and perusing the material

available on record, I am of the considered opinion that the writ petition is devoid of any merits for a number of reasons. First, the petitioner's reliance on the seniority lists of Junior Engineer-II to contend that he had been senior to all the respondents No.3 to 6 is clearly misconceived. As per his own admissions made in the rejoinder, two different seniority lists were prepared for Junior Engineers i.e. Junior Engineer-I (Degree Holders) and Junior Engineer-II (Diploma Holders). Indisputably, at the time of his initial appointment, the petitioner was a diploma holder and was thus, placed at serial number 91 in the seniority list of JEN-II dated 31.03.1984.

However, at the time of his promotion from Junior Engineer to Assistant Engineer, the petitioner was promoted against the vacancy reserved for ST candidates and as such, the petitioner was given accelerated promotion. The fact that the petitioner was given promotion to the post of Assistant Engineer in 1993 against the ST quota has not been disputed by the petitioner. The contention of the petitioner that he was senior to all the respondents No.3 to 6 is thus misconceived. The cadre and seniority lists of Junior Engineer-I and Junior Engineer-II being different, the seniority of respondents No.3 to 6 were not comparable with that of the petitioner. Further, as per the reply filed on behalf of the respondent-JVVNL, till date no JEN-II Diploma Holder of Unreserved Category has been promoted in the cadre of XEN (Civil). This has not been denied by the Petitioner in his Rejoinder. Since the petitioner was not promoted on the basis of his own merit but was given the benefit of accelerated promotion on the high post (Assistant Engineer) and rosters being maintained separately for direct recruitment and promotions and also considering the fact that the cadres of Junior Engineer-I and Junior Engineers-II were separate, the impugned order dated 08.08.2014 was in consonance with the notification dated 20.11.1997 issued by the state government and the law laid down by the Apex Court in various judgments including R.K. Sabharwal Vs. State of Punjab, (1995) 2 SCC 745, Ajit Singh (II) V. State of Punjab, (1996) 2 SCC 715 and Suraj Bhan Meena Vs. State of Rajasthan, (2011) 1 SCC 467.

It is not disputed that for promotions to the post of Executive Engineer from the post of Assistant Engineer, The L- shaped roster system was to be followed in view of the order dated 26.09.2012 and the notification issued by the State Government dated 20.11.1997 vide which vacancy based roster system was replaced with post based roster system. In the relevant year i.e. 2008-09, the cadre strength of Executive Engineers (Civil) in JVVNL was only 2. As per the L-shaped roster, the first two roster points were to be filled up from candidates belonging to the general category. The model roster is as follows: Roster Point for 02 posts

Cadre strength

Initial recruitment

1st

2nd

3rd

4th

5th

6th

7th

1

UR

2

UR

UR

UR

UR

UR

SC

UR

ST

Keeping in view the roster points, the petitioner could not be promoted on the post of Executive Engineer (Civil) but was still not reverted and allowed to continue on the post of Executive Engineer (Civil) in view of the newly added proviso to the JVVNL service rules. In my considered view, the impugned order dated 08.08.2014 is in consonance with the law laid down by a Constitution Bench of the Apex Court in R.K. Sabharwal (*supra*).

The operative portion of the aforesaid judgment, relevant for the purpose of the present controversy is as follows:-

6. The expressions "posts" and "vacancies", often used in the executive instructions providing for reservations, are rather problematical. The word "post" means an appointment, job, office or employment. A position to which a person is appointed. "Vacancy" means an unoccupied post or office. The plain meaning of the two expressions make it clear that there must be a 'post' in existence to enable the 'vacancy' to occur. The cadre - strength is always measured by the number of posts comprising the cadre. Right to be considered for appointment can only be claimed in respect of a post in a cadre. As a consequence the percentage of reservation has to be worked out in relation to the number of posts which form the cadre-strength. The concept of 'vacancy' has no relevance

in operating the percentage of reservation. 7. When all the roster-points in a cadre are filled the required percentage of reservation is achieved. Once the total cadre has full representation of the Scheduled Casts/Tribes and Backward Classes in accordance with the reservation policy then the vacancies arising thereafter in the cadre are to be filled from amongst the category of persons to whom the respective vacancies belong. Jeevan Reddy, J. speaking for the majority in *Indra Sawhney vs. Union of India* [1992 Supp (3) SCC 217 : 1992 SCC (L&S) Supp 1 : (1992) 22 ATC 385 : AIR 1993 SC 477 observed as under: (SCC p. 737, para 814)

"Take a unit/service/cadre comprising 1000 posts. The reservation in favour of scheduled Tribes Scheduled Casts and other Backward Classes is 50% which means that out of the 1000 posts 500 must be held by the members of these classes i.e- 270 by Other Backward Classes, 150 by Scheduled Casts and 80 by Scheduled Tribes. At a given point of time, let us say the number of members of OBC in the unit/ service/ category is only 50, a shortfall of 220. Similarly the number of members of scheduled Casts and Scheduled Tribes is only 20 and 5 respectively, shortfall of 130 and 75. If the entire service/cadre is taken as a unit and the backlog is sought to be made up, then the open competition channel has to be choked altogether for a number of years until the number of members of all backward classes reaches 500 i.e., till the quota meant for each of them is filled up. This may take quite a number of vacancies arising each year are not many. Meanwhile, the members of open competition category would become age barred and ineligible. Equality of opportunity in their case would become a mere mirage. It must be remembered that the equality of opportunity guaranteed by clause (1) is to each individual citizen of the country while clause (4) contemplates special provision being made in favour of socially disadvantaged classes. Both must be balanced against each other. Neither should be allowed to eclipse the other. For the above reason, we hold that for the purpose of applying the rule of 50% a year should be taken as the unit and not the entire of the cadre, service or the unit as the case may be"

Though a futile attempt was made by the petitioner by way of an additional affidavit to aver that the cadre strength of Executive Engineer (Civil) was 29, the same is absolutely misconceived, as rightly pointed out by Mr. Nandwana, learned counsel appearing for the respondents No.3 to 6. The petitioner has relied on the seniority list of Executive Engineer (Civil) dated 20.12.1991 in the erstwhile RSEB to contend that the total cadre strength is 29. Further, the petitioner also placed reliance on the order dated 19.05.1997 passed by the erstwhile RSEB vide which the organized set up of the Civil Wing vis-a-vis working strength of the department was reviewed. The aforesaid seniority list dated 20.12.1991 and the order dated 19.05.1997 would not, in my opinion, come to the aid of the petitioner for two reasons, first RSEB was split up in five different companies (JVVNL being one of them) and as such, the seniority list and the order passed by the then RSEB do not show the cadre strength in JVVNL in the relevant year i.e 2008-09. Second, if the cadre strength of Executive

Engineer (Civil) had been 29 as contended by the petitioner, the L-shaped roster would not have been followed since L-shaped roster is usually followed where the cadre strength is between 2 to 14.

11. Further, I am also of the considered opinion that the reliance sought to be placed on the circular dated 27.12.2012 by the learned senior counsel Mr. Mathur too is misconceived. the said circular dated 27.12.2012 was made applicable only for promotions from the post of Junior Engineer-I (Civil) to the post of Assistant Engineer, as evident from the first three lines of the circular itself. Furthermore, the petitioner was appointed as Junior Engineer-II and the seniority list of Junior Engineer-I (Degree Holders) and Junior Engineer-II (Diploma Holders) being different, the averment of the petitioner that he was senior the respondents No.3 to 6 is absolutely mistaken.

12. That apart there are other reasons for which the writ petition is liable to be dismissed. A bare perusal of the prayer clause made in the petition reveals that no challenge has been made to the notification dated 26.09.2012. It is not the case of the petitioner that his vested or accrued rights were being taken away by virtue of the aforementioned notification. In the absence of any specific prayer made to this effect, no relief can be granted.

My conclusion finds support from the judgment rendered by the Hon'ble Supreme Court in Press Council of India Vs. Union of India & Anr. reported in 2012 (12) SCC 329 wherein in para-6 it has been held as under:-

"6. Having gone through the prayers in the Writ Petition and the orders passed by the High Court, we are of the opinion that the High Court ought not to have issued the aforesaid direction for the sole and simple reason that the prayers in the writ petition were entirely different from the order passed by the High Court and the order passed by the High Court as aforesaid is also not in consonance with the prayers so made. On this short ground alone, the appeals are required to be allowed and they are allowed accordingly and the orders passed by the High Court is set aside. We clarify that we have not gone into other issues raised by the appellants in these appeals. Ordered accordingly."

13. Another ground on which the order dated 08.08.2014 was sought to be challenged was by placing reliance on the order dated 11.04.2018 passed by the Respondents (Annexure 13).

Though the said order was not part of the original writ petition, it was prayed to be taken on record under Order 41, Rule 27 of the CPC. Relying on the said order dated 11.04.2018, Mr. R.N. Mathur vehemently contended that though a similarly situated employee i.e. Mr. Kalyan Singh, belong to the SC category was considered against the Unreserved Category by the Departmental Promotion Committee, the same was not considered in case of the petitioner, who was wrongly denied promotion on the post of XEN against the vacancies reserved for 2008-2009 by not being considered against the UR category. After going through the Minutes of the DPC dates 11.04.2018, I am of the opinion that the argument

made by the learned counsel has little substance. A bare perusal of the order dated 11.04.2018 reveals that Kalyan Singh, who belongs to the SC category too was given ad-hoc promotion to the post of XEN against the vacancies of the year 2017-18. The table contained in the order dated 11.04.2018 clearly states that Mr. Kalyan Singh, too is to be adjusted against future roster point in the SC category since the DPC was convened for considering promotions against 4 vacancies (03 UR and 01 for ST). Thus, the order dated 11.04.2018 is of little aid to the petitioner. Further, it is a settled position of law that Article 14 of the Constitution does not envisage negative equality. (See *Sneh Prabha V. State of U.P.* (1996) 7 SCC 426; *Secy., Jaipur Development Authority V. Daulat Mal Jain* (1997) 1 SCC 35; *State of Haryana V. Ram Kumar Mann* (1997) 3 SCC 321; *Faridabad C.T. Scan Centre V. D.G., Health Services* (1997) 7 SCC 752; *Jalandhar Improvement Trust V. Sampuran Singh* (1999) 3 SCC 494; *State of Punjab Vs. Dr. Rajeev Sarwal* (1999) 9 SCC 240; *Yogesh Kumar Vs. Govt. of NCT, Delhi* (2003) 3 SCC 548; *Union of India V. International Trading Co.* (2003) 5 SCC 437 and *Kastha Niwarak Grihnirman Sahakari Sanstha Maryadit V. President, Indore Development Authority* (2006) 2 SCC 604. Even assuming that Mr. Kalyan Singh has been wrongly given the benefit, the same would not confer any right on the petitioner.

14. In the light of the above, the writ petition is devoid of any substance and is liable to be dismissed and is accordingly dismissed. No order as to costs.