

(2003) 09 RAJ CK 0048
In the Rajasthan High Court
Case No : Civil Writ Petition No. 2631 of 2002

S.D. Shastri

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 18-09-2003

Acts Referred:

Constitution of India, 1950 — Article 32

Citation : (2004) 1 RLW 286 : (2004) 1 WLC 234

Hon'ble Judges : Shiv Kumar Sharma, J;Khem Chand Sharma, J

Bench : Division Bench

Advocate : S.D. Shastri, for the Appellant; Tej Prakash Sharma, for the Respondent

Final Decision : Allowed

Judgement

Shiv Kumar Sharma, J.—By this writ petition the petitioner seeks to quash the judgment dated April 9, 2002 of the Central Administrative Tribunal, Jaipur Bench (in short CAT Jaipur) with the further prayer that the respondents be directed to implement the directions of the Hon'ble Supreme Court issued vide order dated July 30, 1999 and promote the petitioner to Junior Time Scale (in short JTS) grade of Indian Broadcasting Programmes Service (in short IBPS) against the vacancy of 1988-89 or 1989 w.e.f. June 91. Direction in regard to consequential promotion to Senior Time Scale (in short STS) grade of IBPS w.e.f. March, 1997, arrears of salary w.e.f. June, 1991 and compensatory costs has also been sought.

2. Contextual facts depict that the petitioner was selected by the Union Public Service Commission (in short UPSC) for the post of Programme Executive (Hindi spoken word) and he was figured amongst the toppers in the batch of 1977. The petitioner joined his duties on Feb. 16, 1978 at All India Radio Jaipur. Prior to joining the AIR he had qualification of 2 Master Degrees i.e. Acharya (1st Class) and M.A. in Philosophy (1st Class first). Additionally he had degree of Visharad in Hindi and had worked for more than 3 years for Ph.D. under Junior Research Fellowship awarded by UGC. The probationary period of the petitioner was also

completed as usual. Thereafter he had been promoted on adhoc basis as Assistant Station Director (in short ASD) with effect from Jan. 13, 1999. The petitioner averred in the writ petition that he should have been promoted to the next post of ASD after qualifying service of five years but because of the respondents unusual activities, the turn of his promotion did not come till 1990. In the meantime the Government of India had approved the constitution of Indian Broadcasting Programme Service (IBPS) in January 1985, which was notified and implemented on November 5, 1990. This service has four cadres i.e. (1) Programme Management Cadre of All India Radio (2) Programme Production Cadre of All India Radio (3) Programme Management Cadre of Doordarshan and (4) Programme Production cadre of Doordarshan. The first grade of this service is Junior Time Scale corresponding to the post of Assistant Director in the pay scale of Rs. 2200-4000 now revised as Rs. 8000-13500 and the Feeder Cadre of the same is the post of Programme Executive / Producer. After the implementation of the IBPS, the first promotion made by the respondents was in June 91 (DPC held in May 91) in which 45 Programme Executives and 24 Producers were promoted as Assistant Station Director in JTS grade and they were subsequently appointed in the four cadres of IBPS. The case of the petitioner was however deliberately kept in sealed cover as revealed later on the basis of contemplation of disciplinary action, which was kept pending for about four years even without informing the petitioner. Thereafter also he was deprived of this promotion on false plea. As and when it was anticipated that the petitioner would be promoted in future, the sealed cover procedure was engineered, without chargesheeting him and his promotion was denied on the basis of the same. Further even after opening of the sealed cover he was not granted promotion, though he was found fit under the non-selection method. In June 1993 some more Programme Executive & Producers were promoted on adhoc basis to the JTS grade of IBPS and 168 Programme Executive and 146 Producers were regularised respectively in July 1994 and July 1995. In the meantime the petitioner was informed regarding the disciplinary action contemplated against him and closing of the same through simple warning vide letter dated November 12, 1993. The petitioner filed OA No. 344/95 before the Central Administrative Tribunal Jaipur Bench (in short CAT Jaipur) seeking his promotion to JTS grade with effect from June 1991 with consequential promotion to STS grade and arrears of salary along with other relief in the month of August 1995. The CAT Jaipur dismissed the said OA on July 31, 1996 holding that the method of promotion from June 91 onwards was selection (seniority cum merit). The Ernakulam bench of Central Administrative Tribunal had however held on December 9, 1996 that the method of promotion was non selection (seniority cum fitness). In the meantime the SLP filed by the petitioner before the Hon'ble Supreme Court being SLP No. 17189/96 was dismissed on September 16, 1996.

3. The petitioner further averred that to avoid a conflict of law between the CAT Jaipur and CAT Ernakulam, a Full Bench of CAT was convened at Madras, which affirmed the finding of CAT Jaipur on June 3, 1997 and declared the law that the

method of promotion to JTS grade of IBPS was selection. In the meantime the respondents had filed SLP before the Hon'ble Supreme Court and one Smt. Lata Raju had filed a writ petition before the Madras High Court and the writ petition was got transferred by the respondents from Madras High Court to Supreme Court and the same was registered as T.C. No. 8 of 1999. The petitioner also got himself made an intervenor in TC No. 8/99. Their Lordships of the Supreme Court vide order dated July 30, 1999 finally disposed of the case and observed as under:

"The Karnataka Bench allowed the OAs following the decision of the Ernakulam Bench in OA No. 1046 of 1994 and 1069 of 1994 dated 9-12-96. It has been held that the 50% quote for promotion to the post of Junior time scale (for short JTS) in the Indian Broadcasting Programme Service (hereinafter called the IBPS) has to be filled not by selection but by "seniority". On the other hand the Jaipur Bench in OA No. 344 of 1995 dated 31-7- 1996 has held that the promotion to the post of JTS is to be made by "selection". The Full Bench of the Central Administrative Tribunal (Madras Bench) has accepted the view of Jaipur Bench that the 50% quota by promotion to the posts of JTS are to be filled by "selection" and not seniority. The Full Bench has not accepted the view of the Karnataka Bench and the Ernakulam Bench."

"The Full Bench at Madras and Jaipur Bench have relied upon the note 2 below Schedule IV and Schedule V to hold that even for JTS posts at serial No. 5, appointment is by "selection".

"..... for appointment to posts in JTS at serial No. 6, no selection by

assessment of comparative merit is contemplated either in the Rules or in Schedule IV or in Schedule V."

"Keeping in view the relevant Rules, we, thus, find that the view taken by the Ernakulam Bench is the correct view in the sense that the method of promotion to JTS posts is on the basis of promotion by seniority, subject to finding out the fitness of the candidate for the Programme Wing or Production Wing, through the DPC. The Karnataka Bench, therefore, rightly followed the Ernakulam Bench decision. We, therefore, do not see any reason to interfere in the two special leave petitions. As a consequence, the Full Bench view of the Madras Tribunal in Q.A. No. 1221 of 1994 can not be said to be laying down the correct view."

4. The petitioner pleaded that when the respondent did not implement the directions of the Supreme Court despite the representation submitted on August 9, 1999 followed by reminder, he initiated contempt proceedings which were registered as Contempt Petition No. 24/2000. The petitioner incorporated orders passed by the Supreme Court on various dates as under:-

May 5, 2000:

"Mr. K.N. Raval, learned Additional Solicitor General submits that effective steps have been taken for convening of the DPC and the UPSC has been approached

for the purpose, which has drawn up a schedule. We hope that the matter shall be resolved before we take up the matter on the next date and the party is able to avail of the benefit of the order of this Court. The learned Additional Solicitor General submits that as and when the decision is taken by the DPC, in case, the decision is in favour of the petitioner, he shall be given the benefit from the date from which he becomes entitled to it. List on 21st August, 2000."

September 29, 2000

"Union of India to produce relevant records for the purpose of verifying whether the DPC applied the principle of selection which had not been accepted by this Court in its judgment dated 30-7-1999 or it applied the principle of promotion accepted by this Court, so far as the petitioners are concerned."

5. The respondents filed affidavit on November 23, 2000 before the Supreme Court, wherein it was stated that the petitioner was considered again after the order dated 30-7-1999 for the promotion effective from June, 1993 (DPC held in July, 1994) but he was not found fit. As regards the promotion effective from June, 1991, the old rules were applicable and the same is not covered either by IBPS Rules or by the order dated 30-7-1999. Hon"ble Supreme Court thereafter on February 13, 2001 while dismissing the contempt petition, observed as under:-

"In the first place, there is no mandatory order of this Court which the respondents can be said to have breached. The remedy of the contempt petition lies elsewhere, the contempt petition is dismissed. No order as to costs."

6. The petitioner after dismissal of contempt petition, filed writ petition under Article 32 of the Constitution before the Supreme Court, which was dismissed on August 13, 2001 with following observations:-

"We do not think that this is a writ petition which should be entertained under Article 32 of the Constitution. Accordingly it is dismissed. If the petitioner so chooses, he may move the appropriate forum for relief."

7. The petitioner thereafter filed the O.A. before CAT Jaipur which was dismissed on April 9, 2002 on the ground that it was barred by limitation and suffered from constructive resjudicata. Against this finding of CAT Jaipur that the action for filing the instant writ petition has been resorted to by the petitioner.

8. The respondents submitted reply to the writ petition raising preliminary objection about its maintainability. It is averred in the reply that the petitioner was duly considered for promotion by the review DPC held pursuant to the order dated July 30, 1999 but was not found fit. In regard to sealed cover procedure it is pleaded that the said procedure was adopted as per the rules and regulations. According to the respondents the promotion made in 1991 related to the vacancies occurred prior to IBPS Rules came into force and they were governed by the old rules and not effected by the order dated July 30, 1999 of the Supreme Court. Supporting the impugned order of CAT Jaipur the respondents

pleaded that it is a well reasoned order.

9. The petitioner filed rejoinder to the reply and emphasised that after the order dated July 30, 1999 of the Supreme Court, the new cause of action arose, the respondents made promise to consider the case of the petitioner but they considered it w.e.f. June 1993 and not w.e.f. June, 1991. The petitioner again averred that as intimation of the orders of review DPC was communicated to the petitioner vide letter dated September 25, 2000, the filing of O.A. by the petitioner before the CAT Jaipur on August 21, 2001 was within limitation of one year prescribed by the Administrative Tribunal Act.

10. Having analysed the submission advanced before us we find that the law declared by the Supreme Court directly relates to the promotion matter of the petitioner that is why the learned Additional Solicitor General on May 3, 2000 submitted before the Supreme Court that effective steps had been taken for convening of the DPC and the UPSC had been approached for the purpose, which had drawn up a schedule and if the decision would be in favour of the petitioner he shall be given benefit from the date from which he became entitled to it. On Sept. 29, 2000 the respondents were directed by the Supreme Court to produce relevant record for the purpose of verifying whether the DPC applied the principle of selection which had not been accepted in the order dated July 3, 1999.

11. The learned CAT Jaipur appears to have overlooked the directions of the Hon"ble Supreme Court rendered in the order dated July 30, 1999. In para 17 of the impugned judgment it was observed by the Tribunal as under:-

"The controversy whether the method of promotion was selection or seniority loses significance in view of the categorical repeated assessment of the applicant as unfit for promotion by a high powered DPC and for that matter the review DPC."

A look at the above observation indicate that the learned CAT Jaipur did not consider the orders of the Hon"ble Supreme Court wherein it was held that the method of promotion to JTS posts is on the basis of seniority, subject to finding out the fitness of the candidate and the post of JTS in IBPS has to be filled not by selection but by seniority.

12. By replying the writ petition the respondents also averred as under:-

"It is further submitted that promotion made in the year 1991 related to the vacancies which occurred prior to coming in to be being of IBPS rules and hence these promotions are not effected by the order dated 30-7-1999 passed by the Hon"ble Supreme Court."

13. It is evident from the material on record that the respondents have failed to review the earlier method of promotion to JTS posts by selection and did not follow the mandate of the Supreme Court by which it was declared that the posts of JTS in IBPS have to be filled not by selection but by seniority. The DPC of 1991 had not been reviewed by the respondents at all. It appears that the DPC held in

1994-95 for promotion to JTS in IBPS was reviewed in the month of August 2000 and the same has no relevance to the case of the petitioner.

14. As already noticed by us in earlier paras of this order that Hon"ble Supreme Court while dismissing the writ petition of the petitioner on August 13, 2001 granted liberty to the petitioner to move the appropriate forum for relief. Thus OA filed by the petitioner before CAT Jaipur was maintainable and it did not suffer from constructive resjudicata as it was based on the law declared by the Apex Court in its order dated July 30, 1999. The OA which was filed on August 20, 2001 was within limitation of one year from the date of communication of orders passed on the representation of the petitioner i.e. September 25, 2000. We thus find that learned CAT Jaipur overlooked the order dated August 13, 2001 by the Apex Court and the letter of the respondents dated September 25, 2000 while deciding the preliminary objection raised by the respondents.

15. That takes us to the sealed cover procedure adopted by the respondents. Adoption of sealed cover procedure is undoubtedly a safeguard but sometimes this power may be misused and there is a possibility that a genuine case can be defeated with the malice of administration and foul play. In the case of the petitioner sealed cover procedure appears to have been adopted on the eve of the promotion of the petitioner in contemplation of the disciplinary action which was kept pending for about 4 years even without informing the petitioner. The petitioner was never charge sheeted. By adopting the sealed cover procedure, the promotion was denied to him. It also appears that although the petitioner was eligible for promotion in the non selection method but he was not granted promotion even after opening of the sealed cover. The case of the petitioner appears to have been considered with effect from June 1993 and not with effect from June 1991. The learned CAT Jaipur and the respondents in our considered opinion have acted in utter disregard of the legal provisions in not considering the case of the petitioner for promotion to JTS Grade of IBPS against the vacancies of 1988-89 or 1989 with effect from June 1991 and impugned judgment dated April 9, 2002 of the CAT Jaipur as well as the communication dated September 25, 2000 of the respondents deserve to be set aside.

16. As a result of the above discussion, we dispose of the instant writ petition in the following terms :

(i) Judgment dated April 9, 2002 of CAT Jaipur and communication of the respondents dated September 25, 2000 shall stand set aside.

(ii) The Respondents are directed to implement the directions of the Supreme Court issued by the order dated July 30, 1999 and call the meeting of the DPC to consider the case of the petitioner for JTS Grade of IBPS against vacancies of 1988-89 or 1989 with effect from June 1991. The DPC shall also consider the case of the petitioner for consequential promotion to STS Grade of IBPS with effect from March 1997 and arrears of salary with effect from June 1991.

(iii) The above directions shall be complied with within 30 days from today.

(iv) The petitioner shall also be entitled to cost of the writ petition which is quantified as Rs. 3,000/-.