
(2004) 05 DEL CK 0046
In the Delhi High Court
Case No : WP (C) No. 8200 of 2002

Sh. Harcharan Singh

APPELLANT

Vs

Bureau of Indian Standards and Others

RESPONDENT

Date of Decision : 26-05-2004

Acts Referred:

Citation : (2004) 111 DLT 766 : (2004) 76 DRJ 237

Hon'ble Judges : Pradeep Nandrajog, J

Bench : Single Bench

Advocate : K.K. Rai, for the Appellant; B.K. Sood, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—Petitioner, stood promoted to the post of Deputy Director General under respondent no.1 on 30.6.2000. The next higher post available in the cadre was the post of Additional Director General. The post fell vacant on 1.4.2002 upon the superannuation of Sh. D.R. Kohli, who was holding the said post.

2. In contemplation of the anticipated vacancy, respondent no. 1 initiated the process of selection. As per the notified recruitment rules which were existing, eligibility condition was 2 years service in the rank of Deputy Director General. Petitioner did not have the requisite eligibility as he had approximately 1 year and 9 months service in the post of Deputy Director General.

3. As per the Recruitment To Scientific Cadre Regulations, 1988, of the Bureau of Indian Standards i.e first respondent vide Regulation 12, the Executive committee had the power to relax the provisions of the regulations.

4. Acting in exercise of its power to relax the recruitment regulation, the respondent empanelled the petitioner for promotion to the post of Deputy Director General. Matter was thereafter referred, as per the legal requirements to the Union of India for being placed before the Appointments Committee of the

Cabinet for its approval.

5. It is the admitted case of the parties that without approval of the Appointment Committee of the Cabinet, promotion to the post of Additional Director General under the first respondent could not be effected.

6. On 3.5.2002, the Recruitment Regulations, 1988 came to be replaced by the Regulations of 2002.

7. The new Regulation of 2002 brought about a material change. The cadre came to be constituted in reference to grades. i.e. Scientists Group-A and onwards till Scientists Group-H. The post of Additional Director General became equivalent to Scientists Grade-G. Qualifying service, as per the new regulations became 5 years.

8. Since the Recruitment Regulations were totally replaced, Union of India did not grant approval for promotion to the petitioner.

9. Present petition was filed, inter alia, on the ground that a vacancy has to be filled on the basis of the Recruitment Rules in force as on the date of vacancy and alternatively on the ground of discrimination.

10. Ground of discrimination pleaded was that Mr. A.K. Ghosh and Mr. M.K. Ray were granted officiating promotion for 6 months. Petitioner too was granted officiating promotion for 6 months. Petitioner's officiating promotion was not continued. That of Mr. A.K. Ghosh and Mr. M.K. Ray was continued.

11. Respondent opposes the writ petition by alleging that petitioner was not qualified for being appointed as per the existing recruitment regulations of 1988 as Additional Director General when the vacancy fell due on 1.4.2002. Petitioner would have been eligible to be considered for promotion on 30.6.2002. The new Recruitment Regulations came to be notified on 3.5.2002. The new Recruitment Regulations came into force prior to the petitioner becoming eligible. No doubt, there was a power of relaxation under the rules, but before the Cabinet Committee on Appointments could take a decision, new rules had come into force. Secondly, as per the new rules, the cadre underwent a total transformation. The old posts ceased to exist.

12. Opposing the plea of discrimination in the context of Sh. A.K. Ghosh and Sh.M.K. Ray, it is stated by the respondent that these 2 persons had short tenure left. i.e. hardly 2-3 months and since they were even otherwise eligible for promotion as per the new regulations, extension was granted to them till their superannuation.

13. Sh.K.K. Rai, learned counsel for the petitioner, during arguments did not press the issue on the plea of discrimination vis-a-vis the petitioner and Mr. M.K. Ray as well as Mr. A.K. Ghosh.

14. In support of his contention that promotions have to be in accordance with the Recruitment Rules as in force when the vacancy occurred, counsel for the

petitioner relied upon the decision of the Supreme Court reported as Y.V. Rangaiah and Others Vs. J. Sreenivasa Rao and Others,

15. Counsel also relied upon the decision of the Supreme Court reported as Dr. Ramulu and another, etc. Vs. Dr. S. Suryaprakash Rao and others,

16. The ratio of the 2 judgments cited by counsel for the petitioner, noted above, is to the effect that ordinarily, vacancies have to be filled up as per the Recruitment Rules in force when the vacancy occurred, save and except when the amended rules expressly provided to the contrary. But, the ratio of the said 2 judgments would not be attracted in view of the facts of the present case.

17. Reason as to why a vacancy has to be filled up as per the Recruitment Rules in force when the vacancy occurred is because a right accrues to a person to be considered for promotion as and when a vacancy arises and is intended to be filled up.

18. This right cannot be impliedly taken away. If a new rule is brought into force and the said rule is expressly made retrospective, only then the said right to be considered for promotion as per the recruitment rule in force when the vacancy occurred can be taken away.

19. Petitioner was ineligible to be promoted when the vacancy occurred. He had no right to be considered for promotion. It was within the discretion of the respondents to waive the eligibility norm. Process was initiated but before the Appointment Committee of the Cabinet took up the recommendation of the Select Committee pertaining to the appointment of the petitioner, on 3.5.2002 the new Regulations came into force. By the time the new regulations came into force, petitioner was not qualified under the previous regulations for appointment to the post. No right had Therefore vested in the petitioner, to be considered for promotion as a matter of right.

20. Not only that, under the the new Recruitment Rules, the entire cadre underwent a change.

21. Decision of the Supreme Court reported as Rajasthan Public Service Commission Vs. Chanan Ram and Another, be noted.

22. It was a case where the cadre underwent a change. Existing posts ceased to exist. New posts were created. Repelling the argument that promotion had to be effected as per the Recruitment Rules in force when the vacancy occurred, Supreme Court observed as under:-

"But even apart from these two distinguishing features one additional salient aspect of the matter is that these panels were to be prepared for filling up vacancies by promotion to the posts of Sub-Registrars Grade II. The said posts continued to exist in the cadre and the only question was how the vacancies in the said existing posts had to be filled in by promotion by preparing panels for the relevant years. As we have seen earlier in the present case the old posts of

Assistant Directors (Junior) had ceased to exist. Therefore, there remained no occasion for proceeding with recruitment to such non-existing posts pursuant to the earlier stale and infructuous advertisement of 5th November, 1993, Annexure P-1."

23. I find no merit in the writ petition. The same is accordingly dismissed. No costs.